

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

JOHN A. JESSON, E. R. PEOPLES, JAMES W.
HILL, RAY BRUMBAUGH, R. C. WOOD
and JOHN L. MCGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-
ALASKA BANK, a Corporation, Organized
Under the Laws of the State of Nevada,
Appellee.


VOLUME I.

(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court
for the Territory of Alaska, Fourth Division.

Filed

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1756.

F. G. NOYES, Receiver of the Washington-Alaska
Bank, a Corporation,

Plaintiff and Appellee,

vs.

J. A. JESSON, D. H. JONAS, DAVID YARNELL,
DAN RYAN, C. J. ROBINSON, JOHN L. MCGINN,
R. C. WOOD, M. H. McMULLEN, C. E. CLAYPOOL,
ROBERT SHEPPARD, HANS STARK, JOHN FLYGAR,
JOHN P. ANDERSON, E. R. PEOPLES, JAMES W. HILL,
RAY BRUMBAUGH, J. A. JACKSON, JOHN A. CLARK,
J. A. HEALEY, GEORGE PRESTON, B. R. DUSENBURY
and L. N. JESSON,

Defendants and Appellants.

Names and Addresses of Attorneys of Record.

O. L. RIDER, Vinita, Oklahoma;

McGOWAN & CLARK, Fairbanks, Alaska;

A. R. HEILIG, Fairbanks, Alaska;

JOHN L. MCGINN, Keystone Apartments, San
Francisco, Cal.

Attorneys for Defendants and Appellants.

[1½*]

*Page-number appearing at foot of page of Original Certified Transcript of Record.

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 1756.

F. G. NOYES, Receiver, etc.,

Plaintiffs,

vs.

J. A. JESSON et al.,

Defendants.

Stipulation as to the Printing of the Record.

It is hereby stipulated and agreed that in the printing of the record herein for the consideration of the Court on appeal and cross-appeal, that the title of the court and cause in full on all the pages shall be omitted except on the first page, and inserted in place and stead therein "Title of Court and Cause."

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG,

JOHN L. McGINN,

Attorneys for Defendants Wood, Hill, Peoples,
Brumbaugh, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Jul. 6, 1914. Angus McBride, Clerk. [1]

[Title of Court and Cause.]

Amended Complaint.

Plaintiff complains of defendants and for cause of action alleges:

I.

The Washington-Alaska Bank is, and every since the 21st day of January, 1908, has been a corporation duly organized and existing under and by virtue of the laws of the State of Nevada. Said Washington-Alaska Bank was originally incorporated under the corporate name of "The Fairbanks Banking Company," but afterwards, on or about, or shortly prior to, the 14th day of September, 1910, its name was by amendments to its articles of incorporation duly changed to Washington-Alaska Bank." The authorized capital stock of the plaintiff corporation is and was at all times since its incorporation \$300,000.00, divided into 300 shares of the par value of \$100.00 each. In and by the articles of incorporation of said Fairbanks Banking Company, a corporation, it was provided among other things that the board of directors of said corporation should consist of twelve members, four to hold office for six months, or until their successors were elected and qualified, four to hold office for twelve months, or until their successors [2] were elected and qualified, and four to hold office for eighteen months, or until their successors were elected and qualified.

II.

On and prior to the 14th day of March, 1908, the defendants R. G. Wood and James W. Hill, and one

E. T. Barnette, were, as partners, engaged in the business of banking at the city of Fairbanks, Territory of Alaska, under the firm name and style of "The Fairbanks Banking Company."

III.

The Fairbanks Banking Company, a corporation, was organized for the purpose of taking over and acquiring the business heretofore conducted and carried on by The Fairbanks Banking Company, a partnership, as hereinbefore alleged, and for the purpose of promoting, organizing and commencing the business of said Fairbanks Banking Company, a corporation, the said E. T. Barnette, R. C. Wood and James W. Hill, circulated and caused to be circulated in the city of Fairbanks and vicinity, stock subscription lists subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were in words and figures as follows:—

"KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, the organization of a corporation is contemplated by the undersigned under the laws of the State of Nevada, to be known as the Fairbanks Banking Company, with a capital stock of Three hundred thousand dollars, divided into three thousand shares of the par value of one hundred dollars each. The object of which said corporation is to carry on a general banking business in the town of Fairbanks, Alaska, and to absorb the present Fairbanks Banking Company, and such other banking institutions as may be deemed advisable; and WHEREAS steps are now being taken for the or-

ganization of such corporation under the laws of said State of Nevada, but owing to the distance between said State of Nevada and the town of Fairbanks, Alaska, considerable delay must necessarily ensue before such corporation can be created and the organization thereof perfected; and WHEREAS, we, the undersigned, each and all of us are desirous of becoming stockholders in said corporation for the number of shares hereinafter by us set opposite our respective names, and are desirous that in order that the capital stock of said corporation shall be fully subscribed, and the names and number of stockholders of said new corporation may be known to us, that subscriptions for such stock should now be made.

NOW, THEREFORE, in consideration of the premises, we, the undersigned, do hereby promise and agree to and with each other and with said new corporation to be formed [3] to be known as the Fairbanks Banking Company, to subscribe, and each of us do hereby subscribe of the capital stock of said Fairbanks Banking Company the number of shares by us set opposite our respective names and that when said corporation is organized and the stock thereof issued to us we will either pay to the treasurer of said corporation the par value thereof, or such an amount thereof as we can conveniently pay; or, in the event at said time we are unable to make any cash payment upon said stock, that each will give his promissory note for the individual amount of stock subscribed by him; one due on or before the first day of June, 1909, for twenty-five per cent of the amount of the capital stock subscribed by him, and the other

for seventy-five per cent thereof, which shall become due and payable on or before the first day of July, 1908; said notes to bear interest at the rate of one per cent per month from the date of the issuance of the stock. If at the time the stock shall be issued any of the undersigned shall pay thereof an amount equal to twenty-five per cent thereof, then such person is to execute his note for the remaining seventy-five per cent due on or before the first day of July, 1908. If said payment so made shall not equal twenty-five per cent of the par value thereof, then such individual agrees to execute a note for an amount equal to twenty-five per cent thereof, which shall become due and payable on or before the first day of June, 1908, and a note for the remaining seventy-five per cent as hereinbefore set forth. It is expressly understood and agreed that said corporation is to retain and remain the owners of stock until the same is fully paid.

IN WITNESS WHEREOF we have hereunto set our hands and seals this —— day of January, 1909.”

IV.

Said subscription lists were headed by said E. T. Barnette, subscribing for 440 shares of the capital stock of said corporation; R. C. Wood, 220 shares; James W. Hill, 220 shares; and were then signed by various other persons, the total subscriptions aggregating over 2,400 shares; the defendant John L. McGinn subscribed for 100 shares; the defendant J. A. Jesson for 100 shares; the defendant D. H. Jonas for 100 shares; the defendant David Yarnall for 100 shares; the defendant L. N. Jesson for 100 shares;

the defendant John Flygar for 20 shares; the defendant Hans Stark for 100 shares; the defendant Dan Ryan for 25 shares; the defendant C. E. Claypool for 50 shares; the defendant C. J. Robinson for 50 shares; the defendant B. R. Dusenbury for 50 shares; the defendant J. A. Healey for 5 shares; the defendant George Preston for 5 shares; and the defendant John P. Anderson for 25 shares. [4]

V.

The first meeting of the incorporators and the subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held at the city of Fairbanks, Alaska, on March 12, 1908, and a board of twelve directors for said corporation, named and selected by E. T. Barnette, were elected, and a resolution passed and entered on the minutes as follows:

“RESOLVED, that the matter of taking over the property of the Fairbanks Banking Company, the copartnership, consisting of E. T. Barnette, J. W. Hill and R. C. Wood, be left to the board of directors.” Said first board of directors was composed of said E. T. Barnette, and the defendants David Yarnall, J. A. Jasson, D. H. Jonas, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar and John P. Anderson.

VI.

On the 12th day of March, 1908, said board of directors met at the city of Fairbanks, Alaska, and elected as officers of said corporation: E. T. Barnette, President; the defendant James W. Hill, Vice-president; the defendant R. C. Wood, Cashier; and

the defendant B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer, and on the 13th day of March, 1908, said board of directors held an adjourned meeting, and authorized the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a partnership, and thereafter said purchase and acquisition, and the terms thereof were reduced to writing in a contract signed and executed by the parties, dated March 16th, 1908, a true copy of which is hereto annexed marked "Exhibit One" and made a part of this complaint.

VII.

That in accordance with said contract "Exhibit One," stock in said corporation, the Fairbanks Banking Company, was issued to E. T. Barnette, 260 shares; James W. Hill, 130 shares; and R. C. [5] Wood, 120 shares; and the assets of said copartnership enumerated and described in said contract "Exhibit One" were transferred to said corporation. On March 14th, 1908, there was also issued to the various subscribers therefor, stock in said corporation to the amount of 1,502 shares, of the par value of \$150,200.00, and thereupon the said corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, Territory of Alaska, and thereafter continued to carry on and conduct said business until and including January 4th, 1911.

VIII.

The capital stock of the Gold Bar Lumber Company, a corporation, which was sold and transferred by said copartnership, the Fairbanks Banking Com-

pany, to the said Fairbanks Banking Company, a corporation, for \$341,049.00, did not cost the said copartnership in excess of the sum of \$248,067.89, at which sum it was carried on the books of said copartnership at and prior to the transfer to the said corporation, and was at the date of the transfer of a value less than \$248,067.89, and said stock was transferred to and received by said Fairbanks Banking Company, a corporation, at an arbitrarily increased and greatly fraudulent over-valuation of more than \$93,881.11, all of which was done and accomplished with full knowledge, co-operation and consent of all the defendants, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnall, and John P. Anderson, who were then and there directors of said Fairbanks Banking Company, a corporation, and of the defendant R. C. Wood, who was then and there its cashier and a member of the copartnership, Fairbanks Banking Company, and of the defendant James W. Hill, who was then and there its Vice-president and a member of said copartnership, and of the defendant D. R. Dusenbury, who was then and there its Assistant Cashier, Secretary and Treasurer, and of the defendant John L. McGinn, who was then and there attorney and legal adviser both of said copartnership and said corporation Fairbanks Banking Company, and who afterward [6] became a director and vice-president of said corporation, as hereinafter alleged. Said Gold Bar Lumber Company was engaged in the business of manufacturing and selling lumber in the state of Wash-

ington, which business was then and there and ever since has been and still is of an exceedingly hazardous and speculative nature, and the certificates representing the capital stock in said corporation, the Gold Bar Lumber Company, were not at the time of the organization of said corporation, the Fairbanks Banking Company, in the possession of said copartnership, nor were they delivered to said corporation, The Fairbanks Banking Company. [7]

IX.

That the notes, loans and discounts sold and transferred to said Fairbanks Banking Company, a corporation, by said Fairbanks Banking Company, a copartnership, were accepted by said corporation at their face value with the knowledge, consent and approval of the defendants J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, G. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, R. C. Wood, James W. Hill, John L. McGinn and B. R. Dusenbury, then directors and officers of said corporation as aforesaid. That of said notes so sold and transferred as aforesaid, a large amount were then past due, worthless and uncollectible, said amount being in excess of \$53,000.00, all of which are still unpaid and without substantial value, a list of which is as follows:

Maker.	When due.	Amount.
Wm. Casey	May 31, 05	\$ 40.00
Gelling & Bechtolt	Sep. 15, 07	1050.00
Ensor & Griffith	Sep. 15, 06	435.00
Fairburn et al.	Jul. 15, 07	1332.
E. D. Howe	Mar. 4, 07	457.25
Wm. James	Jun. 15, 07	311.97
Alex Larson	Jan. 24, 07	354.35
D. W. Truitt	Sep. 1, 07	1000.
C. Timmerman	May 17, 05	105.
Emily Waters	Dec. 5, 07	40.
Wm. Barrett	Jun. 23, 06	8407.58
Jas. Frost	Jun. 1, 07	850.
Geo. Fenwick	Nov. 31, 06	2000.
P. Gallagher	Sep. 23, 07	133.
W. F. Green	Aug. 1, 07	1332.74
F. Schaupp	Feb. 27, 07	3785.22
Tharp & Rusk	Sep. 14, 07	2500.
J. Worgan	Jul. 1, 06	200.
D. H. Berger	Jul. 28, 07	550.
J. A. York	Oct. 14, 04	100.
“ “	Feb. 1, 05	100.
“ “	Mar. 15, 05	205.
Tanana Electric Co.	Dec. 16, 07	27997.38
		<hr/>
		\$53287.49

That it was then and there well known to said defendant, directors and officers as aforesaid, and by each of them, or by the exercise of ordinary care might have been so known to them, and each of them that said notes above listed were at the time they were so accepted and transferred, past due and

worthless or without substantial value. [8]

X.

The 1,502 shares of the capital stock in said corporation, The Fairbanks Banking Company, so issued to the various subscribers therefor on March 14th, 1908, were all paid for by the promissory notes of the said various subscribers and not in cash, and a large amount of said notes were and still are worthless and uncollectible, and have never been paid, said amount being of the face value of \$22,982.33. [9]

XI.

With an issued capital stock of \$202,200.00, paid for as hereinbefore alleged, and not otherwise, and with no other assets than those of the Fairbanks Banking Company, a copartnership, as mentioned and set forth in "Exhibit One" added to the said stock subscription notes of the face value of \$150,200.00, the Fairbanks Banking Company, a corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, and assumed not only the deposits, debts and other liabilities of the Fairbanks Banking Company, a copartnership, amounting to \$538,940.31, but also an alleged special deposit of \$200,000.00 of E. T. Barnette, never in fact deposited by him, but being the alleged capital claimed by said Barnette, and by the contract "Exhibit One" agreed to be paid to him.

XII.

On March 16, 1908, when said Fairbanks Banking Company, a corporation, so commenced business with said assumed liabilities of \$738,940.31, said Fairbanks Banking Company, a corporation, was

actually insolvent in this: That its assets were then insufficient in value to pay its debts, all of which its then directors and officers hereinbefore mentioned well knew, or by the exercise of ordinary care might have known. And furthermore, said Fairbanks Banking Company, a corporation, at and for a long time after it commenced business, was not paying and did not pay in cash or lawful money, demands made upon it in the ordinary course of business. Prior to the 16th day of March, 1908, said Fairbanks Banking Company, a copartnership, had for a considerable time ceased and failed and refused to pay in cash or lawful money demands made upon it in the ordinary course of business, and was upon what was termed a "scrip" basis; that is, was paying demands made upon it by issuing and paying out its own circulating notes. At the time said Fairbanks Banking Company, a corporation, commenced business, it assumed a liability of \$64,737.00 for outstanding circulating notes of the Fairbanks Banking Company, a copartnership, and had in cash, including gold-dust, bullion and lawful money only the sum of \$38,511.87. [10]

XIII.

Notwithstanding the facts hereinbefore and hereinafter alleged, the said Fairbanks Banking Company, a corporation, continued after the 16th day of March, 1908, to carry on the general business of banking and of receiving and soliciting deposits, and said bank and the defendants as its directors, officers and employees at all times falsely and wrongfully represented and held out to the public generally that said

Fairbanks Banking Company, a corporation, had paid-up capital stock of \$300,000.00.

XIV.

The said defendants David Yarnall, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, John P. Anderson, D. H. Jonas and said E. T. Barnette continued to be and act as directors of said Fairbanks Banking Company, a corporation, and to manage and control its business as such from said 12th day of March, 1908, until the 12th day of September, 1909, when the term of office of David Yarnall, Dan Ryan, C. J. Robinson and M. H. McMullen expired. On said 12th day of September, 1908, said David Yarnall, Dan Ryan, S. J. Robinson, were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, the defendant E. R. Peoples was duly elected director of said corporation for the term of eighteen months, and the defendant James W. Hill was elected a director of said corporation for the term of six months to take the place of Hans Stark, resigned. For the entire period from September 12th, 1908, to March 12, 1909, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, consisted of the defendants J. A. Jesson, John P. Anderson, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples and said E. T. Barnette, and during said period they managed, conducted and controlled said Fairbanks Banking Company, a cor-

poration, and its business as such. On said March 12th, 1909, said defendants C. E. Claypool, Robert Sheppard, James W. Hill, and John Flygar were duly re-elected directors of said [11] Fairbanks Banking Company, a corporation, for the term of eighteen months, and on March 13th, 1909, the defendant Ray Brumbaugh was duly elected a director of said corporation in the place of John P. Anderson, who had vacated his office by remaining absent from the District of Alaska. From and including March 13, 1909, to the 13th day of September, 1909, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, were the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples and said E. T. Barnette, and during said period they managed, conducted and controlled its business as such. On September 13th, 1909, the defendants J. A. Jesson, Ray Brumbaugh, and D. H. Jonas and said E. T. Barnette were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, and the defendant John L. McGinn was duly elected a director thereof for six months to fill the place vacated by the defendant E. R. Peoples. From and including the 13th day of September, 1909, to the 12th day of April, 1910, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, and who managed, controlled and directed its business as such, consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas,

C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, and John McGinn, and said E. T. Barnette, except that on November 13th, 1909, the resignation as directors of Dan Ryan, and C. E. Claypool were accepted, and the defendants R. C. Wood and J. A. Jackson were duly elected in their place, and from November 13th, 1909, to April 12th, 1910, the said defendants R. C. Wood and J. A. Jackson were duly elected and acting directors of said Fairbanks Banking Company, a corporation. On said April 12th, 1910, the said defendants David Yarnall, J. A. Jackson, C. J. Robinson, and John L. McGinn were duly re-elected directors of said Fairbanks Banking Company, a corporation, and thereafter and until September 12th, 1910, the [12] board of directors of said Fairbanks Banking Company, a corporation, who managed, controlled and conducted its business as such consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, R. C. Wood, J. A. Jackson, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, C. J. Robinson, and John L. McGinn, and said E. T. Barnette, except that on May 12th, 1910, the defendants John L. McGinn and R. C. Wood resigned as such directors, and on said 12th day of May, 1910, the defendant John A. Clark was duly elected in the place of the defendant John L. McGinn, and thereafter served and acted as such director, and on June 11th, 1910, J. A. Healey was duly elected in the place of R. C. Wood, and thereafter served and acted as such director. Prior to September 12th, 1910, to take effect on that day, the

number of directors of said Fairbanks Banking Company, a corporation, had been duly and regularly changed by an amendment to its articles of incorporation, from twelve directors to seven directors, to hold office for one year, and on said 12th day of September, 1910, the defendants J. A. Jackson, J. A. Jesson, J. A. Clark, J. A. Healey, D. H. Jonas, and George Preston, and said E. T. Barnette, were duly elected directors of said Fairbanks Banking Company, a corporation, and from said 12th day of September, 1910, until and including January 4th, 1911, they managed, and directed and controlled the business of said corporation as such, and are still directors thereof.

XV.

The defendant James W. Hill, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, chosen and elected first vice-president of said corporation, and the said defendant James W. Hill, accepted said office and entered upon the duties thereof, and thereafter the said defendant James W. Hill continued to act as such vice-president, and to assist in managing and conducting the affairs and business of said Fairbanks Banking [13] Company, a corporation, and an executive officer thereof and a member of its executive committee, under salary until July 1st, 1909, and also continued thereafter to act as director thereof as hereinbefore alleged.

XVI.

The defendant B. R. Dusenbury, although not a

member of the board of directors of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, chosen and elected assistant cashier, and secretary and treasurer thereof, and said B. R. Dusenbury thereupon accepted said offices and entered upon the duties thereof, and thereafter said defendant B. R. Dusenbury continued to act as such assistant cashier, secretary and treasurer, and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer thereof and a member of its committee, until May 12th, 1909. On said May 12th, 1909, said defendant B. R. Dusenbury was duly elected first vice-president of said Fairbanks Banking Company, a corporation, the duties of which he thereupon assumed, and he thereafter continued to be such vice-president and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer and member of its executive committee, until October 12th, 1909.

XVII.

Said defendant L. N. Jesson, although not a member of the board of directors of said Fairbanks Banking Company, a corporation, was on the 12th day of September, 1908, duly chosen and elected second vice-president thereof, and said defendant L. N. Jesson thereupon accepted said office and entered upon the duties thereof, and thereafter said defendant L. N. Jesson continued to act as such second vice-president, and continued to assist in managing and con-

ducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive [14] officer thereof, and as a member of the executive committee thereof, until the 12th day of September, 1910.

XVIII.

Said defendant, R. C. Wood, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, duly chosen and elected cashier thereof, and the said R. C. Wood thereupon accepted said office and entered upon the duties thereof, and acted and performed the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908, and was also afterwards director and manager of said Fairbanks Banking Company, a corporation, as hereinbefore and hereinafter alleged.

XIX.

Shortly after said corporation, the Fairbanks Banking Company, commenced business, said corporation, wrongfully and unlawfully began to reduce its issued capital stock by accepting the surrender thereof and giving in return therefor either cash or the stock subscription notes given for said stock, a list of which stock so surrendered, together with the date of surrender, the number of shares surrendered, the name of the party surrendering, and the amount of cash or the subscription notes returned therefor, is as follows, to wit:

1908.

Date.	Number of Shares.	Party.	Amount.
Jun. 30	130	R. C. Wood	\$13,000.00
Jul. 15	1	P. B. Walsh	100.00
Jul. 20	10	Thomas E.	1,000
Jul. 20	20	McBride, A.	2,000
Jul. 20	2	Letnes, Anton	200
Jul. 20	10	A. N. Larson	1,000
Jul. 20	2	F. E. Johnson	200
Jul. 20	2	J. L. Tobin	200
Jul. 20	5	Harry Cribb	500
Jul. 20	2	S. Hall Young	200
Jul. 20	5	A. J. Nordale	500
Jul. 20	10	Barrett Sickenger	1,000
Jul. 23	5	E. A. Suter	500
Jul. 29	10	S. R. Weiss	1,000
Aug. 5	20	Osmund Olson	2,000
Aug. 6	5	A. J. Williams	500
Aug. 8	10	R. R. Myers	1,000
Aug. 12	5	D. Courtemanche	500
Aug. 14	10	E. M. Keys	1,000
			[15]
Forward.....			\$26,400
Sep. 18	10	Oscar Goetz	1,000
Sep. 18	5	G. A. Vedin	500
Oct. 24	2	McDonnell	200
Nov. 19	10	B. E. Johnson	1,000
Nov. 19	100	Strandberg Bros.	10,000
Nov. 25	10	Strandberg, Emma	1,000
Dec. 12	2	F. E. Johnson	200
1909.			
Feb. 9	2	John Clifford	200

Date.	Number of Shares.	Party.	Amount.
Feb. 19	5	Geo. Jestel	500
Jun. 10	10	Hart & McConnell	1,000
Sep. 21	5	Lewis Enstrom	500
Sep. 21	5	Oscar Enstrom	500
Oct. 28	10	H. B. Parkin	1,000
Oct. 28	1	Alex. Cameron	100
Oct. 28	2	Edith MacCormack	200
Oct. 28	2	J. W. MacCormack	200
Nov. 10	5	Francis H. Taylor	500
Nov. 23	5	McGowan & Clark	500
1910.			
Jan. 18	5	Horton & Dunham	500
Oct. 25	100	John L. McGinn	10,000

\$56,000.00

That during all of the time from and including said June 30th, 1908, to and including said October 25th, 1910, the liabilities of said corporation to its general creditors, greatly exceeded its assets, and by accepting the surrender of its capital stock and returning therefor cash or subscription notes, as aforesaid, the assets of said corporation, to which said creditors could look for payment of their claims were further decreased, and the same were, in the manner and amounts aforesaid, withdrawn and divided among said stockholders of said corporation; that the surrender of said stock and the return of said cash and notes as above set forth, were made to and by said corporation with the full knowledge, consent and approval of the defendants and each of them who constituted its board of directors and offi-

cers on the dates aforesaid, or by the exercise of ordinary care the same could have been known to them and each of them; that the terms of office of the defendants herein as officers and directors of said Fairbanks Banking Company, a corporation, were as follows: [16]

D. H. Jonas	Director	Mar. 12, 1908	to	Jan. 4, 1911
J. A. Jesson	"	"	"	"
C. E. Claypool	"	"	"	Nov. 13, 1909
Hans Stark	"	"	"	Aug. 12, 1908
John Flygar	"	"	"	"
C. J. Robinson	"	"	"	Sep. 12, 1910
John P. Anderson	"	"	"	Mar. 13, 1909
M. H. McMullen	"	"	"	Sep. 12, 1908
Dan Ryan	"	"	"	Nov. 13, 1909
David Yarnell	"	"	"	Sep. 12, 1910
Robert Sheppard	"	"	"	"
E. R. Peoples	"	Sep. 12, 1908	"	Sep. 13, 1909
Ray Brumbaugh	"	Mar. 13, 1909	"	Sep. 12, 1910
John L. McGinn	"	Sep. 13, 1909	"	May 12, 1910
R. C. Wood	"	Nov. 13, 1909	"	"
J. A. Jackson	"	"	"	Jan. 4, 1911
John A. Clark	"	May 12, 1910	"	"
J. A. Healey	"	Jun. 11, 1910	"	"
George Preston	"	Sep. 12, 1910	"	"
James W. Hill	"	Sep. 12, 1908	"	Sep. 12, 1910
John L. McGinn	Attorney	Feb. 12, 1908	"	May, 12, 1910
L. N. Jesson, Second Vice-President and Executive Committeeman,		Sep. 12, 1908	"	Sep. 12, 1910
James W. Hill, Vice-President and Executive Committee-man,		Mar. 12, 1908	"	Jul. 1, 1909
R. C. Wood	Cashier	"	"	Jun. 30, 1908
R. C. Wood	General Mangr.	Sep. 13, 1909	"	May 12, 1910
B. R. Dusenbury, Asst. Cashier and Secretary-Treasurer,		Mar. 12, 1908	"	May 12, 1909
B. R. Dusenbury, Vice-President and Executive Committee-man,		May 12, 1909	"	Oct. 12, 1909
John L. McGinn, Vice President,		Oct. 12, 1909	"	May 12, 1910

XX.

In addition to the 2022 shares of the capital stock in said corporation, the Fairbanks Banking Company, issued on March 14th, 1908, there was afterward issued to various persons in exchange for cash, notes or other considerations, one hundred and thirty-four shares and no more, but by reason of the surrender and cancellation of the shares as mentioned in the preceding paragraph hereof, the total issued capital stock never exceeded 2156 shares, and after November 9th, 1909, never exceeded 1726 shares.

XXI.

In addition to the 520 shares of the capital stock in said Fairbanks Banking Company, a corporation, issued and delivered to said Barnette, Hill and Wood, the said Barnette, Hill and Wood, did, after the 16th day of March, 1908, compute or cause to be computed [17] to March 15th, 1908, all accrued interest on the loans and discounts of the Fairbanks Banking Company, a copartnership, which, in accordance with exhibit one attached to the complaint herein, were turned over to said Fairbanks Banking Company, a corporation. That prior thereto, to wit, on March 12th, 1908, the board of directors of said Fairbanks Banking Company, a corporation, authorized and directed that interest on said notes and discounts be computed to said March 15th, 1908, the same to be payable on or before December 31st, 1908, and that the amount of such accrued interest be placed to the credit of the Fairbanks Banking Company, a copartnership, all of which was done with the knowledge, consent and approval of the

defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, Hans Stark, John Flygar, C. J. Robinson, John P. Anderson, M. H. McMullen, Dan Ryan, and David Yarnell, directors as aforesaid, and of the said R. C. Wood, its cashier, John L. McGinn, its attorney and legal advisor, James W. Hill, its Vice-President, and B. R. Dusenbury, its assistant cashier, secretary-treasurer. That pursuant to said authorization and direction, on March 23d, 1908, the interest account of said Fairbanks Banking Company, a corporation, was charged with the amount of \$39,642.81 as such accrued interest, and the same credited on the books of said corporation to an account known and styled "Old Bank Interest Account." That afterward, on August 5th, 1908, with the express knowledge, consent and approval of the defendants D. H. Jonas, James W. Hill, B. R. Dusenbury and Hans Stark, acting as members of the executive committee of said Fairbanks Banking Company, a corporation, there was issued to the said R. C. Wood, a certain certificate of deposit, due December 31st, 1908, in the sum of \$10,000.00, as an advancement on account of such accrued interest. That afterwards, to wit, on November 9th, 1908, the said James W. Hill, with the express knowledge, consent and approval of the defendants D. H. Jonas, Dan Ryan, James W. Hill, B. R. Dusenbury and L. N. Jesson as members of said executive committee, was authorized to withdraw \$5,000.00 as an advancement on account of said accrued interest. That afterward, to wit, on December 31st, 1908, there was placed on the books of said corporation [18] to

the credit of said E. T. Barnette \$19,741.79, and to the credit of said James W. Hill and R. C. Wood, each, \$9870.90, making a total of \$39,473.69 as such accrued interest, and the same was paid to each of said parties. That said interest was so computed and paid by said corporation out of its funds and without reference to whether or not the same had been collected from the makers of said notes. That as to not less than \$53,287.49 of said notes, said interest had not in fact been paid by said makers thereof, and the same was then and ever since said December 31st, 1908, has been due and unpaid and uncollectible, a list of which said notes is set out in Paragraph IX of the complaint as amended. That plaintiff has no means of knowing the rate at which such accrued interest was figured, but alleges that the same is within the knowledge of said defendants. Plaintiff further alleges that on said December 31st, 1908, the defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, John P. Anderson, Day Ryan, David Yarnell, Robert Shepard, E. R. Peoples, and James W. Hill were members of the board of directors of said Fairbanks Banking Company, a corporation, and the defendant John L. McGinn was its attorney and legal advisor and the defendant L. N. Jesson its Second Vice-President and a member of its executive committee, the defendant James W. Hill its Vice-President and a member of its executive committee, and the defendant B. R. Dusenbury its assistant cashier and secretary-treasurer, and the said payment was made with the knowledge, consent and approval of each of

said defendants, or by the exercise of ordinary care could have been known to them and each of them. That said interest was so allowed and paid without any consideration therefor. [19]

XXII.

On and for a long time prior to the 12th day of May, 1909, there were engaged in business at the city of Fairbanks, other than the said Fairbanks Banking Company, a corporation, two banks, the First National Bank, a corporation organized under the laws of the United States, and the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington. (Said latter-named corporation will hereinafter be called the Washington-Alaska Bank of Washington, to distinguish it from the Washington-Alaska Bank, of which plaintiff is receiver.) On or about May 12th, 1909, the said Fairbanks Banking Company, a corporation, acting through its president, E. T. Barnette, and with the knowledge, consent and approval of its board of directors, and other officers, entered into an agreement with the Washington-Alaska Bank of Washington, in and by which said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington, agreed, to and they did, on or about said May 12th, 1909, purchase and acquire one-half each, the entire capital stock of said First National Bank. The capital stock of said First National Bank was then Fifty Thousand Dollars, and it had, or claimed to have, a surplus of Fifty Thousand Dollars. Said Fairbanks Banking Company, a corporation, and said Washinton-Alaska

Bank, of Washington, paid for the entire capital stock of the said First National Bank the sum of \$62,500.00 each, or a total sum of \$125,000.00. That at the time said capital stock was so purchased, the said First National Bank was engaged actively in the banking business in Fairbanks, Alaska, and ever since has been and now is so engaged. [20]

XXIII.

On or about September 13th, 1909, the said Fairbanks Banking Company, a corporation, acting through its President, E. T. Barnette, with the express knowledge, consent and approval of the defendants, D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, Dan Ryan, David Yarnell, Robert Sheppard, E. R. Peoples, Ray Brumbaugh, John L. McGinn and James W. Hill constituting its board of directors, and of said L. N. Jesson, its Second Vice-President and a member of its executive committee, and the said B. R. Dusenbury, its Vice-President and also a member of its executive committee, purchased of and from W. H. Parsons, Falcon Joslyn, John Schramm and others, the entire capital stock of the Washington-Alaska Bank of Washington, and paid therefor the sum of \$250,000.00 of the money and assets of the Fairbanks Banking Company, a corporation. On the date of said purchase, the said Washington-Alaska Bank of Washington had an issued capital stock of \$150,000.00, and claimed to have, or apparently had according to its books, a net surplus and undivided profit of \$66,839.16, and no more. On said September 13th, 1909, the said Washington-Alaska Bank of

Washington had in its apparent assets, however, the sum of \$70,040.10 of loans past due, and which were and still are without substantial value, and was carrying its real estate and fixtures at \$10,000.00 in excess of their real value. Said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants aforesaid, its then directors and officers, as aforesaid, on said September 13th, 1909, paid to the stockholders of the Washington-Alaska Bank of Washington for said capital stock thereof a premium or bonus of more than \$100,000.00 over and above the then paid in capital stock of said Washington-Alaska Bank of Washington, and over and above the actual value thereof, and thereby wrongfully and fraudulently lost and dissipated more than \$100,000.00 of the funds and assets of the said Fairbanks Banking Company, a corporation, and greatly aggravated and increased its already insolvent condition. [21]

XXIV.

Upon and after the purchase and acquisition by the Fairbanks Banking Company, a corporation, of the said capital stock of said Washington-Alaska Bank of Washington, the said Fairbanks Banking Company, a corporation, acting through its board of directors, and by and with the knowledge, consent and approval of the defendant L. N. Jesson, its Second Vice-President, selected and appointed the defendant R. C. Wood, who was then cashier of the First National Bank, manager of the three banks, the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the

First National Bank, and said three banks continued thereafter until on or about the 12th day of May, 1910, to be managed and operated by the defendant R. C. Wood, as manager, but ostensibly as separate and distinct and unassociated banks. [22]

XXV.

On April 10th, 1910, the said Fairbanks Banking Company, a corporation, being then and there the owner and in control and management of the Washington-Alaska Bank of Washington, caused said Washington-Alaska Bank of Washington to declare and pay to the Fairbanks Banking Company, a corporation, as the owner of the entire capital stock of the said Washington-Alaska Bank of Washington, a dividend of thirty-three and one-third per cent, on the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00. At the time said dividend was so declared and paid, the entire capital stock of the Washington-Alaska Bank of Washington had been owned by said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington had been with the said Fairbanks Banking Company, a corporation, and said First National Bank, under the joint management of the defendant R. C. Wood, for the period of seven months, and during said seven months the net amount of surplus undivided profits and earnings, as shown by the books of said Washington-Alaska Bank of Washington, had decreased from \$66,839.16 to \$57,169.76, or a net loss of \$9,669.40 for seven months' operations. On the day said dividend was so declared and paid to said Fair-

banks Banking Company, a corporation, by said Washington-Alaska Bank of Washington, the said Washington-Alaska Bank of Washington had a capital stock of \$150,000.00, and an alleged and apparent surplus (as shown by the books) of \$57,169.76, but on said date it had among its assets, loans and discounts past due without substantial value, and which have not yet been paid and cannot be collected, amounting to \$76,005.35, and had invested in a certificate of deposit of its insolvent owner, the Fairbanks Banking Company, a corporation, the sum of \$125,000.00.

XXVI.

On said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then board of directors, ordered and directed said \$50,000.00 received as dividend from [23] said Washington-Alaska Bank of Washington, to be disposed of by crediting \$25,000.00 thereof to the stock account, thus reducing the amount at which the entire capital stock of the Washington-Alaska Bank of Washington was carried on the books of the Fairbanks Banking Company, a corporation, to \$225,000.00, and the other \$25,000.00 of said dividend was ordered added to the alleged earnings or net profits on hand of the said Fairbanks Banking Company, a corporation. Thereupon, on said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then board of directors, by a resolution entered on the minutes of the said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and

ordered to be paid on its then outstanding capital stock of \$168,600.00 a dividend of twenty per cent, amounting to \$33,720.00, which said dividend was thereupon actually paid to the then stockholders of the said Fairbanks Banking Company, a corporation.

XXVII.

On said 12th day of April, 1910, at and before the time when the same was ordered to be paid, the said Fairbanks Banking Company, a corporation, was, and long prior thereto had been in a grossly insolvent and failing condition. After adding to the apparent surplus, undivided profits and earnings then on hand the sum of \$25,000.00 of the dividend received from the Washington-Alaska Bank of Washington said Fairbanks Banking Company, a corporation, had on hand in apparent surplus, undivided profits and earnings the sum of \$32,749.82, while the dividend declared and paid amounted to \$33,720.00. Said Fairbanks Banking Company, a corporation, had in fact on said date no earnings, surplus or undivided profits on hand out of which said dividend could legally be paid, but on the contrary had at and prior to said date neither capital nor surplus in this [24] said Fairbanks Banking Company, a corporation, had on said date an issued capital stock of \$168,600.00. It was carrying *on* as an asset on its books \$75,000.00 as a premium on the capital stock of its subsidiary corporation, the Washington-Alaska Bank of Washington, which said asset had no existence whatever and was purely imaginary and of no value; said Fairbanks Bank-

ing Company, a corporation, further had on said April 12th, 1910, carried as an asset at their face value, loans and discounts which were past due, were worthless, and have not yet been paid, and cannot be collected, amounting to \$118,250.47, and was also still carrying on its books as an asset of \$341,949.00 the capital stock of said Gold Bar Lumber Company, which originally had been and still was fraudulently over-valued by a sum in excess of \$93,881.11. That said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully and fraudulently declared and paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Sheppard, Ray Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson and James W. Hill, constituting its said board of directors, and of the defendant L. N. Jesson, its Second Vice-President and a member of its executive Committee and R. C. Wood, its General Manager, out of, by and with the funds and money of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of or with the surplus, earnings, undivided profits of the said Fairbanks Banking Company, a corporation. That on said date of April 12th, 1910, the said Fairbanks Banking Company, a corporation, owed to depositors the sum of \$960,689.79. [25]

XXVIII.

In the month of May, 1910, and shortly prior to the 12th day of May, 1910, the said E. T. Barnette,

as President of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of the said Fairbanks Banking Company, a corporation, wrongfully sold and transferred to the defendants R. C. Wood and John L. McGinn, the entire capital stock of the said First National Bank, for the same sum of \$125,000.00 which the said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank, of Washington, had paid therefor on or [26] about May 12th, 1909. That said sale and said transfer of said stock in said First National Bank to the defendants R. C. Wood and John L. McGinn, was claimed to have been made under and pursuant to an option claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but said option, if it ever in fact existed as claimed, was entered into without consideration, and was void. Said entire capital stock in said First National Bank was carried by said Fairbanks Banking Company, a corporation, for an entire year without any interest or profit paid to or received by said Fairbanks Banking Company, a corporation, and solely for the use, benefit and profit of said defendants R. C. Wood and John L. McGinn, all of which was done, suffered and permitted by and with the knowledge, consent and approval of all of the then directors and officers of the said Fairbanks Banking Company, a corporation, by which act alone

the said Fairbanks Banking Company, a corporation, was damaged in a large sum of money, to wit in a sum in excess of twenty-five thousand dollars.

XXIX.

Immediately, or very shortly after the said John L. McGinn and the said R. C. Wood so purchased and acquired said stock in said First National Bank, and on May 12th, 1910, said R. C. Wood resigned as, and ceased to be a director of said Fairbanks Banking Company, a corporation, and said John L. McGinn resigned as and ceased to be a director and vice-president of said Fairbanks Banking Company, a corporation. At the time and long prior to their said resignations, the said R. C. Wood and John L. McGinn had full and complete knowledge and means of knowledge of the grossly insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they furthermore know that the said E. T. Barnette had at that time not yet withdrawn his alleged special deposit of \$200,000.00, and the said R. C. Wood and [27] John L. McGinn then and there knew that said E. T. Barnette was likewise aware of the said insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they, the defendants Wood and McGinn, also knew that said E. T. Barnette could and would shortly withdraw in cash the whole of said alleged special deposit of \$200,000.00, and which said E. T. Barnette actually did withdraw within sixty days after May 12th, 1910, thereby preferring himself to the extent of \$200,000.00 as an alleged creditor of said insolvent Fairbanks Banking Company,

a corporation, all of which was done with the knowledge, consent and approval of the then directors and officers of the said Fairbanks Banking Company, a corporation.

XXX.

On the first day of October, 1910, the said Fairbanks Banking Company, a corporation, acting through its then board of directors, caused the Washington-Alaska Bank of Washington to be consolidated with the Fairbanks Banking Company, a corporation, by having and causing the said Washington-Alaska Bank of Washington to turn over, deliver and transfer to the said Fairbanks Banking Company, a corporation, all of its assets, and the said Fairbanks Banking Company, a corporation, thereupon assumed all of the liabilities of said Washington-Alaska Bank of Washington, including amounts due to depositors amounting to \$947,800.29. Although said Washington-Alaska Bank of Washington had apparent undivided profits of \$4,658.92 on and prior to the time of said consolidation, said Washington-Alaska Bank of Washington on said date had no undivided profits on hand, but in fact its capital stock of \$150,000.00 was seriously impaired in this: On said first day of October, 1910, said Washington-Alaska Bank of Washington had loans and discounts carried at their face value of \$100,704.98, which were then and there past due, and were and still are bad, worthless and uncollectible, and have not yet been paid, all of which was then and there known to the then directors and officers of said Fairbanks [28] Banking Company, a cor-

poration, or by the exercise of ordinary care might have been known. After said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at said city of Fairbanks as formerly, but under the name of Washington-Alaska Bank, and said Washington-Alaska Bank and its then board of directors at all times after October 1st, 1910, wrongfully, fraudulently and without right, carried on the books of said Washington-Alaska Bank as a book asset the item "Premium Washington-Alaska Bank Stock, \$75,000.00," which said asset had no existence whatever, but in fact was purely imaginary, false and fictitious.

XXXI.

Although said Fairbanks Banking Company, a corporation, was at all times insolvent and in a failing condition, as herein alleged, said Fairbanks Banking Company, a corporation, (but under the name of the Washington-Alaska Bank after the first day of October, 1910) continued actively in business as a bank, and received deposits from the public generally until and including January 4th, 1911, and thereafter on January 5th, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, plaintiffs, vs. Washington-Alaska Bank, a corporation, defendant," commenced in said District Court, Territory of Alaska, Fourth Division, an order was duly given and made appointing F. W. Hawkins receiver of said Washington-Alaska Bank, and said Mack, who thereupon duly qualified and entered upon his duties as such re-

ceiver. Thereafter, on the 6th day of January, 1911, said District Court by an order duly given and made appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and said Mack thereupon duly qualified and entered upon his duties as such receiver; and thereafter said Hawkins and Mack continued to be and act as receivers of said Washington-Alaska Bank until the 12th day of May, 1911, when said Hawkins and Mack resigned as such receivers, and thereupon on said date last named said District Court, by an order duly given and made and entered [29] appointed the plaintiff, F. G. Noyes, receiver of said Washington-Alaska Bank, and said F. G. Noyes thereupon duly qualified as such receiver and ever since has been, and now is the duly qualified and acting receiver of the said Washington-Alaska Bank, and as such is plaintiff in this suit.

XXXII.

On the date and at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13, consisting of amounts due to depositors, other than banks, \$921,357.56, and amounts due to banks in excess of \$115,938.77, and the assets of said Washington-Alaska Bank were, and still are, by reason of the wrongful, fraudulent and negligent acts of the defendants herein alleged, insufficient to pay said liabilities in full.

XXXIII.

The receivers of said Washington-Alaska Bank have collected and reduced to cash as far as possible the assets of said Washington-Alaska Bank, and

there has been declared and paid upon the acknowledged or proven liabilities of said bank, dividends aggregating fifty per cent, save and except that \$12,627.70 of said dividends have either not been called for, or have been withheld by order of Court, and save also that the Dexter Horton National Bank of Seattle, to whom is due the sum of \$128,899.37, and other creditors to the amount of \$4132.63 have not proven their claims, or yet demanded their dividends.

XXXIV.

At the time said Washington-Alaska Bank ceased business on January 4th, 1911, there was due and owing from said Washington-Alaska Bank, to the said Dexter Horton National Bank of Seattle, the sum of \$128,899.37, and the said Dexter Horton National Bank had in its possession all of the said capital stock of the said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank as hereinbefore alleged, and said Dexter Horton National Bank claimed to hold said stock in said Gold Bar Lumber Company as collateral security to secure the payment to said Dexter Horton National [30] Bank of said sum of \$128,899.37, and said Dexter Horton National Bank still has possession of said stock in said Gold Bar Lumber Company, and still so claims to hold the same as such collateral security.

XXXV.

From the time of the organization of said Fairbanks Banking Company, a corporation, at all times the sum of \$341,949.00 of the assets of said Fairbanks Banking Company, a corporation, have been in-

vested in the said stock of the said Gold Bar Lumber Company, and said stock constituted a book asset of that amount when said Washington-Alaska Bank ceased business, and is still subject to the claims made by said Dexter Horton National Bank of Seattle, an asset of said Washington-Alaska Bank. Said F. G. Noyes, as receiver of the said Washington-Alaska Bank, plaintiff, owing to the fact that said stock in said Gold Bar Lumber Company is so held and claimed by said Dexter Horton National Bank, has been and now is unable to sell or dispose of the same, and although he has made diligent attempt has been unable to obtain for said stock in said Gold Bar Lumber Company any offer in excess of the claim of said Dexter Horton National Bank, or any offer whatsoever; and plaintiff alleges that if said stock in said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank, has any value in excess of the claim of said Dexter-Horton National Bank, it is of a wholly uncertain and speculative character.

XXXVI.

The only remaining assets of said Washington-Alaska Bank in said receiver's hands, out of which any further dividends to depositors and other creditors can be paid, are bills, and notes and overdrafts due from various persons and corporations, of the face value of \$266,020.31; Real Estate and furniture and fixtures carried on the books of said corporation at \$40,726.13; stock in the Chena Milling, Smelting & Refining Company of the par value of \$1000.00, and a claim against the Scandinavian-American Bank of

Seattle for \$17,886.05, in litigation. That said bills, notes and [31] overdrafts, although of the face value of \$266,020.31, are not of that value. The whole amount thereof are past due, and not to exceed \$80,000.00 thereof are owing from solvent debtors or can be collected, and the remainder thereof are bad, worthless and uncollectible. Said real estate, furniture and fixtures are not of the actual cash or market value of more than \$20,000.00, and said stock in said Chena Milling, Smelting & Refining Company has no actual or market value.

XXXVII.

Plaintiff therefore does hereby allege that at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, the assets of said Washington-Alaska Bank were, and still are, by reason of the wrongful, fraudulent and negligent acts and conduct of the defendants herein alleged, insufficient in amount to pay the debts and liabilities thereof, in full, and that the sum which will be required in addition to said assets, in order to pay said liabilities in full, will and does amount to more than Four Hundred Thousand Dollars.

XXXVIII.

The said wrongful, unlawful and fraudulent and negligent acts and conduct of the defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company), as hereinbefore alleged, are and were the sole and proximate causes of the said assets of said Washington-Alaska Bank being so insufficient, as aforesaid, to pay its liabilities in full, and by reason of said wrong-

ful, unlawful and fraudulent and negligent acts and conduct of said defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company) said Washington-Alaska Bank suffered loss and damage in excess of the sum of Four Hundred Thousand Dollars, the exact amount of which cannot be determined except by an accounting to be had in a Court of Equity.

XXXIX.

On account of the various terms of office of said defendants as directors and officers of said Washington-Alaska Bank not being identical, but beginning and ending at many and divers different [32] dates, it would, if plaintiff herein should pursue any remedy at law he might have in the premises, cause a multiplicity of suits and actions, and cause large and useless expense, and furthermore, the trial and examination into the matters and things herein alleged will involve the examination into many complicated accounts, which can only properly be done in a court of equity. Therefore plaintiff alleges that he has in the premises no plain, speedy or adequate remedy at law, and therefore invokes the aid of a court of equity, wherein only matters of this kind are properly cognizable and relievable.

WHEREFORE, plaintiff prays for judgment of this Court, that an accounting be had and taken by this Court, or by a Master or Referee, appointed by this Court and under its supervision, to determine the amount due to plaintiff for the wrongful, fraudulent and negligent acts and conduct of the defendants as directors and officers of said Washington-

Alaska Bank (formerly Fairbanks Banking Company) herein alleged, and that plaintiff have judgment entered against defendants, and each of them, for the amount found due from them respectively upon such accounting.

PLAINTIFF ALSO PRAYS for all other and further relief to which he may be in equity entitled, including costs.

O. L. RIDER,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing amendment to complaint; I have read said amendments to complaint, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 23d day of May, A. D. 1913.

[Notarial Seal] L. D. BENNETT,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks. [33]

Due and legal service of copy of the foregoing amendments to complain is hereby accepted for the defendants J. A. Jesson, George Preston, E. R. Peoples, John A. Clark, Ray Brumbaugh and James W. Hill, this —— day of May, 1913.

McGOWAN & CLARK,
Attorneys for Said Defendants.

Due and legal service of copy of the foregoing amendments to complaint is hereby accepted for the

defendants R. C. Wood, J. A. Healey and John L. McGinn, this 23 day of May, 1913.

A. R. HEILIG,

Attorney for Said Defendants. [34]

[**Exhibit 1—Agreement and Assignment, March 16, 1908, Between A. W. Hill et al. and The Fairbanks Banking Co.**]

AGREEMENT AND ASSIGNMENT

between

J. W. Hill, E. T. Barnette and R. C. Wood to and with The Fairbanks Banking Company. [35]

AGREEMENT.

This Indenture, made and entered into this 16th day of March, 1908, by and between E. T. Barnette, James W. Hill and R. C. Wood, copartners doing business under the firm name and style of The Fairbanks Banking Company of Fairbanks, Alaska, the parties of the first part, and the Fairbanks Banking Company, a corporation organized, created and existing under and by virtue of the laws of the State of Nevada, party of the second part.

WITNESSETH: That, whereas, the parties of the first part as copartners since the month of May, 1905, have been engaged in carrying on and conducting a general banking business in the town of Fairbanks, Alaska, under the name and style of the Fairbanks Banking Company, and is possessed at this time as a part of the property and business of said copartnership—

(a) Stock in the following corporations, namely:

1. Four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation organized, created and existing under and by virtue of the laws of the State of Washington. The certificates of which were issued August the 14th, 1906, as follows:—Certificate No. 11 to R. C. Wood, 24 shares; Certificate No. 12, E. T. Barnette, 48 shares; Certificate No. 13, James W. Hill, 24 shares. Said Certificates of Stock now being in the possession of the Scandinavian-American Bank of Seattle, Washington, and enjoined by Seattle court from delivering. Said stock being of the value of \$341,949.00 as per statement hereto attached, marked Exhibit A.
 2. The entire stock of the Tanana Publishing Company, a corporation organized and existing under and by virtue [36] of the laws of the State of Washington. Said stock being of the agreed value of \$12,000.00.
- (b) Of the following real estate:—
1. Bank building and lot of the agreed value of\$19,423.58
 2. Warehouse of agreed value of..... 3,360.00
 3. Building and lot town of Cleary, where a branch bank is being conducted; the agreed value of..... 1,695.50
 4. Assay building and plant, agreed value of 2,860.57
- (c) Have outstanding loans and discounts of the value of...353,842.54
- All of which are evidenced by notes of

the parties owing the same. A scheduled statement specifying the name of the debtor, and the face of the note is thereto attached and marked Exhibit B. Some of which said notes are secured by mortgages upon real or personal property; and

(d) Overdrafts as appear upon the books of the parties of the first part, of the agreed value of 8,326.75

as per list attached marked Exhibit C.

(e) Due from Banks as follows:

Bank of B. N. A..... 2236.66
Dome City Bank..... 714.42
National Park Bank..... 790.61
Seattle National Bank..... 3951.00
Valdez Bank & Mercantile

Co. 247.78

Dexter, Horton & Co..... 1240.40

Amounting to the sum of..... 9,180.87

(f) Cash on hand amounting to... .. 35,774.38

(g) Gold-dust of the value of 2,737.49

(h) Sundry other credits of the parties of the first part to the agreed value of.... 637.34

Making the total resources of the Bank as agreed upon by the parties

hereto of the value of..... 790,940.31

And, whereas, the liabilities of said parties of the first part are as follows:

1. Script now in circulation..... 64,737.00
2. Deposits—Ordinary 356,677.92
3. Deposits—Savings.... .. 63,238.22

[37]

4. Due to Banks as follows:—

Alaska Bank & Safe Deposit Co.....	273.44
Ladd & Tilton.....	355.96
Corn Exchange National Bank.....	7,659.38
First National Bank, San Francisco	7,357.09
Scandinavian-American Bank	12,713.93
National Bank of Commerce.....	12.81
Cleary Branch	25,919.56

Making a total liability..... 538,940.31

And, whereas, the party of the second part was incorporated for the express purpose of taking over all of the property, real, personal and mixed of the parties of the first part, their business and good will (save and except the sum of \$200,000.00, the original capital of the parties of the first part, the same being the personal property of E. T. Barnette) to the valuation thereon placed, as heretofore set forth. And in consideration thereof was to assume and pay all the liabilities of the parties of the first part, as hereinbefore set forth; and

Whereas, E. T. Barnette of the parties of the first part has personally belonging to him of the assets of the parties of the first part the sum of \$200,000.00, being the amount of the capital stock of the parties of the first part contributed to said copartnership by

the said E. T. Barnette; and it has been agreed that said sum of \$200,000.00 shall be repaid by the party of the second part to the said E. T. Barnette one year from the release of the said Gold Bar stock from the injunction now in force against it; and that said E. T. Barnette during said time shall leave said amount upon deposit without interest with the party of the second part, provided, however, that in the event the party of the second part shall sell said Gold Bar stock for cash, then the said sum of \$200,000.00 immediately upon receipt of said cash by the party of the second part shall become immediately [38] due and payable; and in the event that said Gold Bar stock is not sold for cash, but part for cash and part on time, then the said E. T. Barnette shall be entitled to receive such a proportion of said sum of \$200,000.00 as the cash paid upon the purchase price of said Gold Bar stock shall bear to the entire purchase price. And,

Whereas, owing to a certain action now pending in the Superior Court of the State of Washington, for King County, entitled J. H. Causten, Plaintiff, vs. E. T. Barnette, Defendant, in which said action the said Causten is seeking to be declared the owner of a certain part and portion of the capital stock of the Gold Bar Lumber Company issued in the name of E. T. Barnette, as heretofore set forth; and

Whereas, said litigation is now undetermined, and the right of the said Causten to any part or portion of said stock of the Gold Bar Lumber Company is undetermined, and it is the desire of the said E. T. Barnette, and the party of the second part, that the

said E. T. Barnette shall indemnify the party of the second part for any loss that may be sustained by reason of any adverse decision in the value of the Gold Bar stock; and said E. T. Barnette has heretofore agreed that the sum of \$200,000.00 before mentioned shall also be security to the party of the second part under the conditions and terms set forth on page three of this agreement, against any adverse decision of the Court in Causten vs. Barnette suit, as such decision may decrease the value of the Gold Bar property as accepted by the party of the second part; and

Whereas, the party of the second part has agreed with the parties of the first part to issue to them stock for the amount that the assets of said company shall exceed its liabilities less the sum of \$200,000.00, and the parties of the first part have agreed to accept the same. [39]

Now, therefore, for the purpose of carrying out the terms and agreements between the parties hereto, as hereinbefore set forth, this Indenture,

Witnesseth: That the parties of the first part for and in consideration of the foregoing and of other good and valuable consideration to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents assign, transfer and set over unto the party of the second part, four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation created and existing under and by virtue of the laws of the State of Washington, and agree to transfer and deliver to the party of the second part the certificates

of stock now owned by them as hereinbefore set forth as soon as they obtain possession of same; and do hereby assign, transfer and set over unto the party of the second part all of their right, title and interest in and to all and singular the property, real, personal and mixed of said Gold Bar Lumber Company situated at Gold Bar, Washington, or wheresoever situated according to statements hereto attached.

And the said E. T. Barnette personally agrees to and with the party of the second part that he will save the party of the second part harmless as to any decrease in the value of said Gold Bar Lumber Company stock on account of the litigation now pending in the court of Seattle entitled Causten vs. Barnette, and that the sum of \$200,000.00 shall remain upon deposit with the Fairbanks Banking Company upon the terms and conditions heretofore set forth on page 3 of this agreement, and be security to said party of the second part against any adverse decision of the Court in said suit which may decrease the value of the Gold Bar property as accepted by the party of the second part.

The parties of the first part also hereby assign, transfer [40] and set over unto the party of the second part all of their stock in and to the Tanana Publishing Company, and the property that belongs to said corporation as heretofore agreed between the parties. It being understood that the stock of paper now in the possession of the parties of the first part shall remain and be their property.

The parties of the first part hereby assign, transfer and set over unto the party of the second part

all their right, title and interest in and to the Bank Building and the lot upon which the same is situated, the warehouse situated thereon, the building and lot in the town of Cleary, and all the right, title and interest in and to the assay building and plant situated in Fairbanks, Alaska, and hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby assign, transfer and set over unto the party of the second part all and singular the personal property, fixtures, vault, safe deposit boxes, and stock in trade, apparatus and effects used in connection with the business of said bank and the business and good will of the parties of the first part to the party of the second part, and to its assigns forever.

The parties of the first part hereby assign, transfer and set over unto the party of the second part all of their outstanding loans and discounts as the same appear in the scheduled statement hereto attached marked exhibit "A," and the notes of the debtors given to evidence the amount of such loans and discounts, together with all mortgages upon real or personal property that have been given to secure the same, and hereby agree that they will transfer to the party of the second part by proper indorsement all of said notes and mortgages and forthwith deliver the same into the [41] possession of the party of the second part.

Also all of the right, title and interest of the par-

ties of the first part in and to all overdrafts as the same appear upon the list hereto attached marked exhibit "C," and all moneys due and owing the parties of the first part from the banks mentioned in page 2 of this agreement; and likewise hereby transfer, assign and set over to the party of the second part all cash on hand now belonging to the parties of the first part; all gold-dust in their possession as the same appears on page 2 of this agreement, and all the property of the parties of the first part, real, personal or mixed that has this day been turned over to the party of the second part, and of which the party of the second part is now in the possession of.

The intention of this agreement being to place the party of the second part in the shoes of the parties of the first part as to the banking business of the Fairbanks Banking Company and as to all properties heretofore mentioned or specified.

To have and to hold unto the party of the second part, its successors and assigns, forever.

And the parties of the first part hereby authorize and empower the party of the second part, its successors and assigns, to perform all acts that may be necessary to protect and preserve the properties hereby assigned; and to bring all necessary actions at the cost of the party of the second part to enforce the collection thereof, or to protect the same.

And the said party of the second part in consideration of the foregoing hereby covenant and agree to and with the parties of the first part that it will in due course pay all the debts and discharge all the liabilities of the said parties of the first part as the

same are specified on [42] pages 2 and 3 of this agreement, and will at all times hereafter effectually keep indemnified the parties of the first part their executors and administrators and their assets and effects against all such debts and liabilities and all actions, proceedings, costs and expenses in respect thereto, and all costs and expenses by reason of any action or proceedings which may be instituted or taken by said party of the second part by virtue of the power or authority hereinbefore contained, or of anything relating thereto.

The party of the second part agrees to pay to E. T. Barnette the sum of \$200,000.00 as hereinbefore on page three of this agreement specified, save and except, however, that if a decision adverse to the said E. T. Barnette shall be rendered in said cause of Causten vs. Barnette and by reason thereof the value of the Gold Bar Stock shall be depreciated by reason of Causten being declared the owner of a part or portion thereof, then, the amount of such depreciation shall be deducted from said sum of Two Hundred Thousand Dollars.

The party of the second part hereby agrees that it will issue to the parties of the first part paid up stock to the amount they shall be entitled to under the terms of this agreement.

This agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part by resolution of its board of

directors has hereunto by its president and secretary set its corporate name and seal this the 16th day of March, 1908.

Signed, sealed and delive
red in the presence of: [43]

JOHN L. MCGINN.	E. T. BARNETTE.	(Seal)
H. F. YEAGER.	JAMES W. HILL.	(Seal)
	R. C. WOOD.	(Seal)

FAIRBANKS BANKING COMPANY,
By E. T. BARNETTE,
President.

[Seal] Attest: R. B. DUSENBURY,
Secretary.

United States of America,
Territory of Alaska,—ss.

THIS is to certify that on this 16th day of March, 1908, personally appeared, E. T. Barnette, James W. Hill and R. C. Wood, to me personally known to be the individuals described in and whose signatures are subscribed to the foregoing instrument and they acknowledged to me individually, and not one for the other, that they signed, sealed and delivered the said instrument freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal] JOHN L. MCGINN,
Notary Public for Alaska. [44]

United States of America,
Territory of Alaska,—ss.

THIS is to certify that on this, the 16th day of March, 1909, personally appeared before me E. T.

Barnette and B. R. Duzenbury to me personally known and known to me to be the president and secretary, respectively, of the Fairbanks Banking Company, the corporation named in the foregoing instrument as the party of the second part, and the said president executed the said instrument, and acknowledged to me that he signed, sealed and delivered the same by authority of the board of directors of said corporation, for the uses and purposes therein mentioned, and the secretary affixed the seal of said corporation thereto.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal]

JOHN L. MCGINN,
Notary Public for Alaska.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Amended Complaint.

Filed in the District Court, Territory of Alaska, 4th Div. May 23, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [45]

[Motion of John A. Jesson et al. to Strike Amended Complaint.]

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now the defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, George Preston, and John A. Clark, and move this Court for an order striking the amended complaint

in the above-entitled action from the files of this Court, for the reason that more than one cause of action has been attempted to be pleaded in said amended complaint, without stating each cause of action separately as prescribed by section ninety-six of part four of Carter's Annotated Codes of Alaska.

McCOWAN & CLARK,
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Rec'r., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike. John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, George Preston, John A. Clark.

Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [46]

[Title of Court and Cause.]

Motion of R. C. Wood to Strike Amended Complaint.

Comes now R. C. Wood, one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded

separately, and do not all belong to the same class.

JOHN L. MCGINN,

A. R. HEILIG,

Attys. for Wood.

Received copy May 28, 1913.

O. L. RIDER,

Atty. for Pltff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendant. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [47]

[Title of Court and Cause.]

Motion of John L. McGinn to Strike Amended Complaint.

Comes now John L. McGinn, one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded

separately, and do not all belong to the same class.

JOHN L. MCGINN,

A. R. HEILIG,

Attys. for McGinn.

Received copy May 28, 1913.

O. L. RIDER,

Atty for Pltff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendant. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [48]

[Title of Court and Cause.]

Motion of J. A. Healey, to Strike Amended Complaint.

Comes now J. A. Healey one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded separately, and do not all belong to the same class.

JOHN L. MCGINN,

A. R. HEILIG,

Attys. for Healey.

Received copy May 28, 1913.

O. L. RIDER,
Atty. for plttf.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division, Noyes, Plaintiff, vs. Jesson et al., Defendants. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk by H. C. Green, Deputy. [49]

[Title of Court and Cause.]

Order Denying Motions of Defendants, J. A. Jesson, Brumbaugh, Peoples, Hill, Preston and Clark to Strike Amended Complaint.

Now, on this day the motions of defendants J. A. Jesson, Brumbaugh, Peoples, Hill, Preston and Clark, to strike amended complaint coming on for hearing, after arguments by the respective attorneys, O. L. Rider for plaintiff, and John A. Clark, for said defendants,

It is ordered that said motions be and the same are hereby, denied.

F. E. FULLER,
District Judge. [50]

[Title of Court and Cause.]

Order Denying Motion of Defendants Wood, McGinn and Healey to Strike Amended Complaint.

Now, on this day the motion of the defendants, Wood, McGinn and Healy, to strike the amended complaint coming on for hearing, after argument by the respective attorneys, O. L. Rider, for plaintiff, and A. R. Heilig, for said defendants,

It is ordered, that said motion be, and same is hereby, denied.

F. E. FULLER,
District Judge. [51]

[Motion of E. R. Peoples, to Strike Amended Complaint.]

MOTION TO STRIKE.

[Title of Court and Cause.]

Comes now, E. R. Peoples, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of

action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska Fourth Division, F. G. Noyes, as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to strike of E. R. Peoples.

Filed in the District Court, Territory of Alaska, 4th Div., May 28, 1913, C. C. Page, Clerk by H. C. Green, Deputy. [52]

**[Motion of George Preston, to Strike Amended
Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now, George Preston, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division, F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of George Preston.

Filed in the District Court, Territory of Alaska, 4th Div., May 28, 1913, C. C. Page, Clerk by H. C. Green, Deputy. [53]

**[Motion of John A. Jesson to Strike Amended
Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now, John A. Jesson, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named,

without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for moving defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division, F. G. Noyes, as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of John A. Jesson.

Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [54]

**[Motion of John A. Clark, to Strike Amended
Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now John A. Clark, one of the defendants

in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this *moving* defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants, therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38 and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division.

F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of John A. Clark. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [55]

**[Motion of Raymond Brumbaugh, to Strike
Amended Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now, Raymond Brumbaugh, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants, therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, para-

graph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs, John A. Jesson et al., Defendants. Motion to Strike of R. Brumbaugh. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [56]

**[Motion of James W. Hill to Strike Amended
Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now, James W. Hill, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and

things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of James W. Hill. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk.

By H. C. Green, Deputy. [57]

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff. [58]

[Title of Court and Cause.]

**Order Denying Motions of Defendants J. A. Jesson,
Hill, Preston, Clark, Brumbaugh and Peoples to
Strike Portions of Amended Complaint.**

Now, on this day the motions of defendants, J. A. Jesson, Hill, Preston, Clark, Brumbaugh, and Peoples to strike portions of the amended complaint coming on for hearing, after argument by the respective attorneys, O. L. Rider, for plaintiff, and John A. Clark for said defendants.

IT IS ORDERED that said motions be, and same are hereby, denied.

F. E. FULLER,

District Judge. [59]

[Title of Court and Cause.]

Demurrer of R. C. Wood to Amended Complaint.

Comes now, R. C. Wood, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following ground:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this

that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, R. C. Wood.

III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged cause of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint set forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company; in paragraph 19 an alleged cause of action for wrongfully and fraudulently causing and permitting five hundred and sixty shares of said stock to be surrendered and money or notes to be paid therefor; in paragraph 21 an alleged cause of action for \$39,642.81 accrued interest wrongfully paid to the said Wood, E. T. Barnette and J. W. Hill; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks [60] Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank, at a time when it appears from said complaint that said Wood was neither officer nor director of said Fairbanks Banking Company, and had nothing to do with said transaction; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend

by said Fairbanks Banking Company, amounting to \$33,720.00; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to the said Wood and J. L. McGinn; in paragraph 29 an alleged cause of action based upon the withdrawal by the said Barnette of \$200,000.00 from the funds of said bank, at a time when it appears from said complaint that said Wood was neither an officer nor a director of said Fairbanks Banking Company and had nothing to do with said transaction.

IV.

That this action has not been commenced within two years after the several alleged causes of action accrued.

J. L. MCGINN,
A. R. HEILIG,

Attorneys for Defendant R. C. Wood.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,
Attorney for Plaintiff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4th Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [61]

[Title of Court and Cause.]

Demurrer of J. A. Healey to Amended Complaint.

Comes, now, J. A. Healey, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following grounds:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, J. A. Healey.

III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged causes of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint sets forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company, a corporation, at a time when it appears from the complaint that he was neither an officer nor director of said bank, in paragraph 19 an alleged cause of action permitting five hundred and sixty

shares of stock to be surrendered and money or notes to be given therefore at a time when it appears that said Healey was neither an officer nor director of said bank; in paragraph 21 an alleged cause of action for \$39,642.81 [62] accrued interest wrongfully paid to R. C. Wood, E. T. Barnette and J. W. Hill, at a time when it appears from the complaint that said Healey was neither an officer nor director of said bank; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank, at a time when it appears from said complaint that the said Healey was neither an officer nor director of said bank and had nothing to do with said transaction; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend by the said Fairbanks Banking Company, amounting to \$33,720.00 at a time when it appears from the complaint that said Healey was neither an officer nor director of said bank; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to R. C. Wood and J. L. McGinn, at a time when said Healey was neither an officer nor director of said bank; in paragraph 29 an alleged cause of action based upon the withdrawal by the said E. T. Barnette of \$200,000.00 from the funds of said bank.

J. L. MCGINN,

A. R. HEILIG,

Attorneys for Defendant J. A. Healey.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,
Attorney for Plaintiff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [63]

[Title of Court and Cause.]

Demurrer of J. L. McGinn to Amended Complaint.

Comes now, J. L. McGinn, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following grounds:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, J. L. McGinn.

III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged causes of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint sets forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company, a corporation; in paragraph 19 an alleged cause of action for wrongfully and fraudulently causing and permitting five hundred and sixty shares of stock to be surrendered and money or notes to be paid therefore, during a period in part of which said McGinn was neither an officer nor director of said bank; in paragraph 21 an alleged cause [64] of action for \$39,642.81 accrued interest wrongfully paid to R. C. Wood, E. T. Barnette and J. W. Hill, at a time when the said McGinn was neither an officer nor director of said bank; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend by said Fairbanks Banking Company amounting to \$33,720.00 to the stockholders of said bank; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to the said McGinn and R. C. Wood; in paragraph 29 an alleged cause of

action based upon the withdrawal by the said E. T. Barnette of \$200,000.00 from the funds of said bank at a time when it appears from said complaint that the said McGinn was neither an officer nor director of said bank, Fairbanks Banking Company, and had nothing to do with said transaction.

J. L. McGINN,

A. R. HEILIG,

Attorneys for Defendant, J. L. McGinn.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,

Attorney for Plaintiff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [65]

[Title of Court and Cause.]

**Demurrer [of E. R. Peoples, to Amended
Complaint.]**

Now comes E. R. Peoples, appearing for himself separately, and demurs to plaintiff's amended complaint on file in the above-entitled action, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, in that it appears affirmatively from the plaintiff's said amended complaint that E. T. Barnett should be joined as a part defendant, in order

fully to determine all the issues presented in this action.

2. That several causes of action have been improperly united in said amended complaint, in that it appears therefrom that there are twelve separate and distinct causes of action set forth therein, that are not stated separately as required by law and are improperly united.

3. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant and does not contain facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

4. That this action has not been commenced against this defendant within the time limited by the Codes of Alaska, as said amended complaint shows affirmatively that any alleged wrongful act committed by this defendant was committed more than two years prior to the time of the institution of this action, and is barred by the provisions of paragraph 1 of section 8 of part 4 of Carter's Annotated Codes of Alaska.

Wherefore, this demurring defendant prays that plaintiff [66] take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,
Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,
Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of E. R. Peoples.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [67]

[Title of Court and Cause.]

**Demurrer [of James W. Hill, to Amended
Complaint.]**

Comes now, James W. Hill, appearing for himself separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it

affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid-in capital of the Fairbanks Banking Company to amount to the [68] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Washington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and

money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000.00 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of James W. Hill.

Filed in the District Court, Territory of Alaska, 4th Div., May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [69]

[Title of Court and Cause.]

**Demurrer [of John A. Jesson to Amended
Complaint].**

Comes now, John A. Jesson, appearing for himself

separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid-in capital of the Fairbanks Banking Company to amount to the [70] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the

corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Washington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,
Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,
Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of John A. Jesson.

Filed in the District Court, Territory of Alaska, 4th Div., May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [71]

[Title of Court and Cause.]

**Demurrer [of John A. Clark to Amended
Complaint.**

Now, comes the defendant, John A. Clark, appearing for himself separately and demurs to the plaintiff's complaint on file in the above-entitled action, on the following grounds, to wit:

(1) That there is a defect of parties defendant in said action in that it appears affirmatively from plaintiff's amended complaint on file in this action that E. T. Barnette should be joined as a party defendant in order fully to determine all the issues presented by said amended complaint.

(2) That several causes of action have been improperly united in said complaint, in that it appears from said complaint that there are twelve or more separate and distinct alleged causes of action set forth in said complaint, alleged separate and distinct sets of alleged malfeasance on the part of the

directors, and that they are not stated separately as required by law and are improperly united.

(3) That said amended complaint does not state facts sufficient to constitute a cause of action or any cause of action against this defendant in any of the alleged acts of malfeasance alleged to have been committed by said directors of said bank at any time, as it appears from said amended complaint that demurring defendant was not a director when any alleged acts of malfeasance were performed by the directors of said bank, and that he could not be held liable therefor.

Wherefore, this demurring defendant prays that plaintiff [72] take nothing for the alleged causes of action set forth in his amended complaint herein and that this demurring defendant go home with his costs.

McGOWAN & CLARK,
Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of John A. Clark.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [73]

[Title of Court and Cause.]

**Demurrer [of George Preston to Amended
Complaint].**

Now, comes the defendant George Preston, appearing for himself separately and demurs to the plaintiff's complaint on file in the above-entitled action, on the following grounds, to wit:

(1) That there is a defect of parties defendant in said action in that it appears affirmatively from plaintiff's amended complaint on file in this action that E. T. Barnette should be joined as a party defendant in order fully to determine all the issues presented by said amended complaint.

(2) That several causes of action have been improperly united in said complaint, in that it appears from said complaint that there are twelve or more separate and distinct alleged causes of action set forth in said complaint, alleged separate and distinct sets of alleged malfeasance on the part of the directors, and that they are not stated separately as required by law and are improperly united.

(3) That said amended complaint does not state facts sufficient to constitute a cause of action or any cause of action against this defendant in any of the alleged acts of malfeasance alleged to have been committed by said directors of said bank at any time, as it appears from said amended complaint that demurring defendant was not a director when any alleged acts of malfeasance were performed by the directors of said bank, and that he could not be held liable therefor.

Wherefore, this demurring defendant prays that plaintiff [74] take nothing for the alleged causes of action set forth in his amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,
Attorneys for Demurring Defendant.

Due service thereof admitted this May 28, 1913.

O. L. RIDER,
Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of George Preston.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [75]

[Title of Court and Cause.]

Demurrer [of Raymond Brumbaugh to Amended Complaint].

Comes now, Raymond Brumbaugh, appearing for himself separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid in capital of the Fairbanks Banking Company to amount to the [76] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Wash-

ington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000.00 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of Raymond Brumbaugh.

Filed in the District Court, Territory of Alaska,
4th Div. May 29, 1913. C. C. Page, Clerk. By H.
C. Green, Deputy. [77]

[Title of Court and Cause.]

**Order Overruling Demurrer of Defendants, McGinn,
Wood and Healy [to Amended Complaint, etc.].**

Now, on this day the demurrers of the defendants McGinn, Wood and Healey, coming on to be heard, after argument by the respective attorneys, O. L. Rider, for plaintiff, and A. R. Heilig, for said defendants.

IT IS ORDERED that said demurrers be, and same are hereby overruled, and said defendants are allowed thirty (30) days within which to file their answers herein.

F. E. FULLER,
District Judge. [78]

[Title of Court and Cause.]

**Order Overruling Demurrer of Defendants,
Brumbaugh, Preston, Clark, J. A. Jesson, Hill
and Peoples [to Amended Complaint, etc.].**

Now, on this day the demurrers of the defendants Brumbaugh, Preston, Clark, J. A. Jesson, Hill and Peoples, coming on to be heard, after argument by the respective attorneys, O. L. Rider, for plaintiff, and John A. Clark, for said defendants.

IT IS ORDERED that said demurrers be, and the same are hereby, overruled, and said defendants are

given thirty (30) days within which to file their answers herein.

F. E. FULLER,
District Judge. [79]

[Title of Court and Cause.]

Separate Answer of Defendants R. C. Wood, J. A. Healey and John L. McGinn.

Come now, the defendants R. C. Wood, J. A. Healey and John L. McGinn, and, answering the Amended Complaint of the plaintiff on file herein, say: [80]

I.

Answering paragraph 3 of said amended complaint, these defendants deny that E. T. Barnette, R. C. Wood, and James W. Hill circulated, or caused to be circulated, in the city of Fairbanks, or vicinity, or elsewhere, stock subscription lists, subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were, or are, in words and figures as set forth in paragraph 3 of said amended complaint.

II.

Answering paragraph 4 of said amended complaint, the defendants admit that said E. T. Barnette signed said subscription list for four hundred forty (440) shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty (220) shares of said capital stock, but deny that the same was signed or subscribed by the said R. C. Wood for two hundred and

twenty (220) shares or any shares. And deny that said James W. Hill, R. C. Wood, and E. T. Barnette caused said subscription lists to be circulated or that they circulated the same.

III.

Answering paragraph 5 of said amended complaint, defendants deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on 12th day of March, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held up on the 8th day of February, 1908; deny that on the 12th day of March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, were elected; deny that the said E. T. Barnette named or selected said board of directors, otherwise, than by placing the names of said [81] persons in nomination at the meeting of the subscribers and stockholders held February 8th, 1908.

IV.

Answering paragraph 6 of said amended complaint, these defendants deny that, on 13th day of March, 1908, said board of directors authorized the acquisition or purchase of the Fairbanks Banking Company, a partnership, or the assets in business of said Fairbanks Banking Company, a partnership, otherwise than as in the further, separate, and affirmative defense of these defendants hereinafter set forth. Deny, except as in the further and separate answer of these defendants hereinafter set forth, that

the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a partnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated March 16th, 1908, and deny that a true copy of the same is attached to the amended complaint and marked "Exhibit 1."

V.

Admit that there were issued to E. T. Barnette two hundred and sixty (260) shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1." Admit that there was one hundred and thirty (130) shares of the capital stock of said corporation issued to James W. Hill, but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defendants. Deny that there was ever issued to R. C. Wood one hundred and thirty (130) shares of the capital stock of said Fairbanks Banking Company. Admit that the assets of said copartnership, enumerated and described in said contract, "Exhibit 1," were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants.

[82]

VI.

Answering paragraph 8 of said amended complaint, these defendants deny that, at or immediately prior to the transfer of the assets of the Fairbanks

Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,067.89, or a less sum than \$341,949.00. Deny that, at the date of said transfer, the value of said Gold Bar Lumber Company stock was a sum less than \$248,067.89, or was of a less value than the sum of \$341,949.00. Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased or grossly fraudulent or any over-valuation of more than \$93,881.11 or any sum whatsoever, and deny that the same or all of it was done or accomplished with the full knowledge, co-operation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Shepard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnell, and John P. Anderson, or of the defendants R. C. Wood, James W. Hill, B. R. Dusenbury, and John L. McGinn; and deny that, at said time, the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the District of Alaska. Deny that the business of the Gold Bar Lumber Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature. Deny that the capital stock of said Gold Bar Lumber Company, a corporation, was not delivered to said Fairbanks Banking Company.

VII.

Answering paragraph 9 of said amended com-

plaint, these defendants deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation. Deny that, of the notes so sold or transferred to said corporation, a large amount was then past due, worthless, or uncollectible, and deny that the amount of past due, worthless, and uncollectible paper was a sum in excess of \$53,000.00 or any sum; and deny that the same [83] are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph 9 of said amended complaint, were worthless or uncollectible, or that the same are worthless and uncollectible; deny that it was then and there well known to said defendants, directors, or officers aforesaid, or by each of them, or by the exercise of ordinary or of great care might have been so known to them or any or each of them, that the said notes listed in said paragraph 9 of said amended complaint, were, at the time that the same were accepted or transferred to said Fairbanks Banking Company, a corporation, past due or worthless or without substantial value.

VIII.

Answering paragraph 10 of said amended complaint, these defendants deny that, for the 1502 shares of the capital stock of said corporation, issued on March 14, 1908, the same were all paid for by promissory notes, but allege that some were paid for in cash. Deny that a large amount of said notes were, or still are, worthless or uncollectible, or that the same have never been paid, and deny that the amount of said worthless and uncollectible notes is

of the face value of \$22,982.33 or any other sum.

IX.

Answering paragraph 11 of said amended complaint, these defendants deny that there was an issued capital stock of \$202,200, or a greater sum than \$189,200. Deny that, with no other assets than those of the Fairbanks Banking Company, a copartnership as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200, the Fairbanks Banking Company, a corporation, on March 16, 1908, commenced business as a bank. Deny that the amounts and the assets set forth in said paragraph 11 constituted all of the assets of said Fairbanks Banking Company, a corporation. Deny that the sum of \$200,000 belonging to E. T. Barnette was an "alleged" special deposit, and deny that the same was not in fact deposited by the said E. T. Barnette. [84]

X.

Answering paragraph 12 of said amended complaint, these defendants deny that, on March 16, 1908, when said Fairbanks Banking Company, a corporation, commenced business, that said corporation was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts; but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations. Deny that knowledge of the actual insolvency of said bank was then known to the directors or officers of said institution hereinbefore mentioned, or by the exercise of great, ordinary, or other care, might have been

known. Admit that said bank on the 16th day of March, 1908, was upon a "scrip" basis, but allege that all the other banks in the Fairbanks Recording District and the major portion of the banks throughout the United States, was upon the same "scrip" basis owing to the financial "flurry" in existence at that time.

XI.

Answering paragraph 13 of said amended complaint, these defendants deny that said bank, or the defendants mentioned in the amended complaint, or the officers, directors, and employees of said bank, at all times or any times falsely or wrongfully, or otherwise, represented or held out to the public generally, or otherwise, that said Fairbanks Banking Company, a corporation, had paid-up capital stock of \$300,000.00.

XII.

Answering paragraph 14 of said amended complaint, these defendants deny that John L. McGinn was a director of said bank from and including the 13th day of September, 1909, to the 12th day of May, 1910; deny that John L. McGinn and R. C. Wood, or either of them, continued to act as directors of said bank subsequent to the 1st day of May, 1910.

XIII.

Answering paragraph 17 of said amended complaint, these defendants deny that the defendant L. N. Jesson acted as an executive [85] officer of said corporation, or as a member of the executive committee thereof, until the 12th day of September, 1910, or any other time.

XIV.

Answering paragraph 18 of said amended complaint, these defendants admit that at the meeting of the board of directors, held March 12th, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered upon his duties thereof, or that he accepted said office or entered upon his duties as cashier prior to the 17th day of April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908, but allege in this connection that upon the 12th day of May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but at the request of the board of directors continued to act as cashier until June 29th, 1908.

XIV.

Answering paragraph 19 of said amended complaint, these defendants deny that, shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof, or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the date of surrender and the number of shares surrendered and the names of the parties surrendering or the amount of cash or subscription notes returned thereof, is as is set forth in the list set out in said paragraph 19 of the amended complaint. Deny that the defendant R. C. Wood

ever surrendered any issued capital stock of said Fairbanks Banking Company, a corporation, and deny that he was ever the owner of the same. Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received, any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor. [86]

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge, consent or approval of the defendants or each of them who constituted its board of directors or officers, on the dates set forth in said paragraph XIX, or that, by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surrendered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the board of directors of said bank,

or with the knowledge, consent, or approval of the defendants.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2020 shares of the capital stock of said corporation on the 4th day of March, 1908, or a greater amount than 1892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital stock never exceeded 2156 shares, or after the 9th day of November, 1909, never exceeded 1726 shares, these defendants have no knowledge or information sufficient to form a belief, and therefore deny the same. [87]

Answering paragraph XXI of said amended complaint, the defendants deny each and every allegation, matter, and thing contained therein, save and except as hereinafter set forth in the separate, further, and affirmative defense of these defendants.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70,040.10 of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value.

Deny that said Fairbanks Banking Company, a corporation, with the *excess* knowledge, consent or approval of the defendants in said paragraph XXIII mentioned, its then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for said capital stock thereof, a premium or bonus or more than \$100,000.00 or any other sum over and above the then paid in capital stock of [88] the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz.: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to

confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time and prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own board of directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Company, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00, and in this connection these defendants allege that the directors of said Washington-Alaska [89] Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management of the defendant R. C. Wood, otherwise than as has been set forth in the preceding paragraph. Admit that the

amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66,839.16 to \$57,169.76, but deny that said decrease was a net loss of \$9,669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57,169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets loans and discounts past due without substantial value, or which had not yet been collected or can not be collected, amounting to the sum of \$76,005.35, or an other amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00, but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then board of directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of 168,600 a dividend of twenty per centum, amounting to \$33,720.00.

Answering paragraph XXVII of said amended complaint, these defendants deny that on 12 April,

1910, or at or before the time when said dividend mentioned in the preceding paragraph was ordered [90] to be paid, the said Fairbanks Banking Company, a corporation, was, or long prior thereto had been, in a grossly insolvent or failing condition. Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus, or undivided profits on hand, out of which said dividend could legally be paid, and deny that, at or prior to said date, said Fairbanks Banking Company had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the asset carried by the Fairbanks Banking Company on its books of \$75,000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet been paid, or that can not be collected, in a sum amounting to \$118,250.47, or any other sum. Deny that the capital stock of the Gold Bar Lumber Company originally had been, or still was on said 12 April, 1910, fraudulently overvalued by a sum in excess of \$93,881.11 or any sum. Deny that said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or

approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W. Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson was a member of the executive committee of said corporation), or of R. C. Wood, (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks Banking Company, a corporation, owed to depositors the [91] sum of \$960,689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood, and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and John L. McGinn was claimed to have been made

under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered into without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for an entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit, and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was done, suffered, or permitted by and with the knowledge, consent, or approval of all the then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum to wit, in a sum in excess of \$25,000.00 or any sum.

Answering paragraph XXIX of said amended complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge [92] or means of knowledge, of the grossly insolvent and failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit

of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Barnette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation, was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw in cash the whole of said alleged special deposit of two hundred thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation, these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent, and approval of the then board of directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

XV.

Answering the allegations of paragraph XXX of said amended complaint, this answering defendant

admits the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the manner therein set forth, but alleges that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of their lack [93] of information and belief in the matter, denies that there was owing to the said depositors the sum of \$947,800.29.

Further answering the allegations of said paragraph XXX these answering defendants deny that said Washington-Alaska Bank of Washington had no undivided profits on hand at the time of said consolidation, and avers, that, as they are informed and believe, and therefore so allege on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4,658.92; that answering defendants are informed and believes and basing their denial on such information and belief, denies that the capital stock of the said Washington-Alaska Bank of Washington was seriously impaired, or impaired in any way, as alleged in said paragraph; denies that said bank had on hand at said time loans and discounts in the sum of \$100,704.98, which were bad, worthless, and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; alleges that answering defendant has no information or belief as to whether or not the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington at their face value or at their present worth, and defendant alleges that he has no informa-

tion or knowledge as to whether or not said notes have been paid, but is informed and believes that a portion of said notes has since been paid, and basing his denial on such information and belief and lack of information, denies that the notes of the face value of \$100,707.98, carried by the Washington-Alaska Bank of Washington on its books on the first day of October, 1910, have not been paid; denies that, on the first day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100,704.98, carried on the books of the Washington-Alaska Bank of Washington were worthless, or bad, or uncollectible, or that any material portion thereof was so worthless, or bad, or uncollectible; admits that after said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the [94] town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and denies that, at all times after the first day of October, 1910, or at any time after said first day of October, 1910, said directors, fraudulently, and without right, or fraudulently, or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock, \$75,000.00"; admits that said item was carried on the books, as therein set forth, but deny that said asset had no existence whatsoever, or that the same was purely imaginary, false, and fraudulent, or imaginary, or false, or fraudulent.

XVI.

Answering the allegations of paragraph XXXI of said amended complaint, these answering defendants admit that, subsequent to the first day of October, 1910, and up to and including the fourth day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but denies that said bank was, during said time, insolvent and in a failing condition or insolvent, or in a failing condition, as alleged in said paragraph; admits the other matters and things in said paragraph contained. [95]

XVII.

Answering the allegations of paragraph XXXII, this answering defendant avers that he has no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the 4th of January, 1911, as alleged in said paragraph, but denies that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of this answering defendant, or of the board of directors of which this defendant was a member, rendered insufficient to pay said liabilities in full, and denies that the assets of said bank were impaired, injured, or rendered insufficient to pay the liabilities of said bank, by reason of any act or thing done by this answering defendant, or his codirectors during the time this defendant was a member of said board of directors.

XVIII.

Answering the allegations of paragraph XXXIII

of plaintiff's said amended complaint, this answering defendant denies that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admits that there have been paid on the acknowledged and proven liabilities of the bank, dividends aggregating fifty per centum, and answering defendant alleges that he has no knowledge or information as to whether or not \$12,627.70 of said dividends have either not been called for or have been withheld by order of Court; answering defendant is informed and believes, and therefore so alleges, that a portion of the claim of the Dexter Horton National Bank of Seattle has been paid, and basing his denial on such information and belief, denies that there is due or owing to said Dexter Horton National Bank of Seattle the sum of \$128,899.37, but alleges that he has no knowledge of how much is due to said bank; answering defendant further alleges that [96] he has no information as to whether creditors to the amount of \$4,132.62 have failed to prove their claims or have not demanded dividends.

XIX.

Answering the allegations of paragraph XXXIV, this answering defendant admits that, on the fourth day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle, a large sum of money, the exact amount of which is to this answering defendant unknown, and admits the remainder of said paragraph.

XX

Answering the allegations of paragraph XXXV of

plaintiff's amended complaint, this answering defendant denies that the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and alleges that he has no information or knowledge as to whether or not F. G. Noyes as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum whatsoever; so neither admits nor denies said allegation; answering defendant is informed and believes, and basing his denial on such information and belief, denies that the stock of the Gold Bar Lumber Company has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and denies that any valuation in excess of said sum is wholly uncertain and speculative.

XXI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, this answering defendant alleges that he has no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver, other than the Gold Bar Lumber Company stock, as alleged in said paragraph, sufficient to form a belief, and expressly denies that there are not now in the hands of the receiver, and were not in said receiver's hands at the time of the filing of said complaint, other assets [97] than the assets set forth in said para-

graph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31 are not of that value, this answering defendant alleges that he has no information or knowledge sufficient to form a belief as to said matters, and basing his denial on such lack of information and belief, denies the same. Denies that only \$80,000.00 thereof is owing from solvent debtors and can be collected, and denies that the balance thereof is bad, worthless, and uncollectible, or bad, or worthless, or uncollectible. Answering defendant alleges that he has no knowledge as to the actual cash or market value of the real estate, furniture, and fixtures, sufficient to form a belief in order to enable him to admit or deny the same.

XXII.

Answering the allegation of paragraph XXXVII of plaintiff's said amended complaint, defendant denies the matters and things therein set forth.

XXIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, this answering defendant denies each and every matter and thing therein contained.

XXIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, this answering defendant denies each and every matter and thing therein contained. [98]

And defendants, for a further, separate, and affirmative defense, allege that, on 12 December, 1907,

owing to the unusual and continuous withdrawal of funds by the depositors of the Fairbanks Banking Company, a copartnership, brought about by a feeling of unrest in financial circles all over the United States as well as in the Tanana Valley, the said Fairbanks Banking Company, a copartnership, was compelled to close its doors and suspend business. A meeting of the depositors and creditors of said bank was immediately called and, on 14 December, 1907, at the United States courthouse in Fairbanks, Alaska, a large meeting of the depositors and creditors of said bank was held, at which meeting a committee consisting in W. G. Cassels, C. E. Claypool, Day Ryan, George Preston, and D. H. Jonas, was elected, by open ballot of the depositors and creditors present, to investigate and examine into the affairs of the said Fairbanks Banking Company and to report back to the meeting of the depositors and creditors to be held on 16 December, 1907. That said committee so selected consisted in men of high standing in this community for honesty, integrity, and good business judgment. That said committee, acting according to instructions, and after having obtained expert accountants, proceeded to examine carefully into the affairs of said bank, and, after examining all the books, vouchers, documents, and other evidences of the affairs of said bank, and after separately scrutinizing all the notes, mortgages, certificates, and other resources of said bank, made a report to the said meeting of depositors on 16 December, 1907, of the resources and liabilities of said bank, and in said report declared and stated that the resources of said

bank exceeded its liabilities in the sum of \$288,579.73. That said committee reported that the net value of the Gold Bar Lumber Company stock,—a corporation of the State of Washington,— [99] held by the said Fairbanks Banking Company, was the sum of \$341,949.00. That, on examining the loans, the same were divided into three classes; class No. 1 being the class which said committee considered as gilt-edged; class No. 2, being the class which said committee considered as perfectly good; and class No. 3 being the class that the committee considered might be doubtful, and which said last or doubtful class amounted to the sum of \$66,235.44, and which said last or doubtful class was eliminated and not considered as arriving at the resources of said Fairbanks Banking Company. That the committee, hereinbefore mentioned, was known as the board of trustees of the Fairbanks Banking Company, a copartnership, and continued to act in that capacity until the said Fairbanks Banking Company, a copartnership, was taken over by the corporation.

That, in the fore part of January, 1908, a large number of business, professional, and mining men, representative men of the Fairbanks Precinct, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase, take over, and absorb the business of the Fairbanks Banking Company, a copartnership, and at said meeting negotiations were begun by said mining, professional, and business men with the Fairbanks Banking Company, a copartnership, for the purchase of the same. That said meeting was a preliminary one, and that

thereat it was agreed that a corporation should be organized under the laws of the State of Nevada, for the purpose of taking over and absorbing and purchasing said Fairbanks Banking Company, a copartnership. That the name of said corporation should be the Fairbanks Banking Company. That the amount of the capital stock should be \$300,000.00, divided into 3000 shares of the par value of one hundred dollars each. That the property of said bank should be turned over and that, in the event a surplus of assets over liabilities was found to exist, after deducting [100] the sum of two hundred thousand dollars, which was the personal property of said E. T. Barnette, stock should be issued to E. T. Barnette, for one-half of said surplus, and that either stock or money should be paid to R. C. Wood and James W. Hill, at their option, for the other half of said surplus. That, at said time, it was contemplated that, owing to the great distance between Fairbanks, Alaska, and the State of Nevada, and the uncertainty and slowness of travel, the organization of the said corporation could not be perfected before 15 February, 1908, and it was agreed among said proposed incorporators that the issue of stock for said corporation should be as of date 15 February, 1908, and that the amount of stock subscribed by any person, other than that subscribed for property, should on said 15 February, 1908, be paid for either in cash, or in the event that, at said time, said subscriber was not able to make any cash payment on said stock, each subscriber should give his promissory notes for the individual amount of stock sub-

scribed by him, one due on or before 1 June, 1908, for twenty-five per centum, of the amount of the capital stock subscribed by him, and the other for seventy-five per centum thereof, which should become due and payable on or before the first day of July, 1908, said notes to bear interest at the rate of one per centum a month from the date of the issuance of the stock until paid. Further it was agreed that, if at the time the stock should be issued, any of the subscribers should pay therefor an amount equal to twenty-five per centum thereof, then such subscriber was to execute his note for the remaining seventy-five per centum due on or before the first day of July, 1908. It was also agreed that, if said payment so made should not equal twenty-five per centum of the par value thereof, then such subscriber agreed to execute another note for an amount equal to twenty-five per centum thereof, which should become due and payable on [101] or before the first day of June, 1908, and a note for the remaining seventy-five per cent so hereinbefore set forth.

And for the purpose of carrying out the object of the hereinabove-mentioned meeting a committee consisting in J. A. Jesson, C. E. Claypool, and D. H. Jonas, was appointed to go into the details of the reorganization of the Fairbanks Banking Company and of the taking over of the business of said institution by said proposed new corporation. That said committee met on 5 January, 1908, and after investigating the affairs of the bank made the following report to be presented for the consideration of the proposed new incorporators:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted.

(e) That all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution. [102]

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock

in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars without interest for one year be accepted, and that it be the understanding that such deposits will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30 and December 31.

Which said report was, on 6 January, 1908, submitted to an adjourned meeting of the professional, mining, and business men—the proposed incorporators—and at said meeting the said report was read and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting. That at said meeting [103] a subscription list, a copy of which is set forth in paragraph III

of said amended complaint was presented and signed by the said proposed incorporators, setting forth the amounts for which each respectively subscribed. At said meeting it was also agreed, on behalf of the Fairbanks Banking Company, represented by E. T. Barnette and James W. Hill, that said Fairbanks Banking Company, a copartnership, would turn over to said corporation the property of said Fairbanks Banking Company, a copartnership, on the terms specified in said report, and said proposed incorporators, in behalf of said proposed corporation in consideration thereof, agreed to assume the liabilities of the Fairbanks Banking Company, a copartnership.

That said Fairbanks Banking Company, a corporation, became a corporation on the 21st day of January, 1908. That, on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held, for the purpose, among others, of obtaining the notes of the subscribers for the stock subscribed by them, and at said meeting said stock notes were subscribed. That at said time the articles of incorporation of said Fairbanks Banking Company had not yet been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the articles of incorporation, when a formal meeting would be held and proper by-laws be adopted.

That said articles of incorporation did not reach

Fairbanks until some time in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect "that the [104] matter of taking over the property of the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, James W. Hill, and R. C. Wood, be left to the board of directors." That, immediately after the adjournment of said stockholders' meeting, the board of directors met and organized by the election of a president, vice-president, cashier, assistant cashier, secretary, and treasurer, and at said meeting it was moved and duly seconded that "the board of directors ratify the arrangement as to the taking over of the assets, property, business, and liabilities of E. T. Barnette, James W. Hill, and R. C. Wood, upon the terms and conditions as are set forth in the minutes of the meeting of the subscribers held January 5th, 1908, and which is as follows: That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees, and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted, and that all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution, and that all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such ac-

crued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908; and should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken be paid to them not later than July 1st, 1908, and that the proposition of Captain E. T. Barnette, to leave on deposit with the new corporation the sum of two hundred thousand dollars without interest for one year, be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the *Saustens vs. Barnette* suit in so far as such decision may [105] decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees; and that the executive committee be empowered to see that all papers and transfers be made properly by the officers of the old Fairbanks Banking Company and such transaction legally carried out." Which motion being duly put and seconded the same was unanimously carried.

That, at the meeting held by the proposed stockholders of said corporation on 6 January, 1908, it was believed by all present that the organization of the Fairbanks Banking Company, a corporation, could be perfected by 15 February, 1908, and that, by said date, said corporation could take over the affairs of the copartnership. It was then agreed that, as the expenses of operating the bank from that date up to the time of the taking over of the affairs

of the copartnership by the corporation, would fall on the copartnership, that by reason thereof said copartnership should be entitled to all interest on existing loans until the affairs of the copartnership were turned over to the corporation, and for that reason said copartnership was declared to be entitled to interest on existing loans up to 15 February, 1908. At the meeting of the board of directors, held on 12 March, 1908, the matter of allowing the copartnership accrued interest up to 16 March, 1908, when it was contemplated that the corporation would take over the business of the copartnership, was taken up and discussed, and it was moved and seconded that the following paragraph contained in the minutes of 5 January, 1908, of the proposed incorporators, to wit: "That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the corporation and the same be payable on or before December 31, 1908," be changed so that [106] the words "February 15" be made to read "March 15," which said motion was duly carried.

That, during all the negotiations hereinbefore mentioned, the defendant R. C. Wood was not in Alaska, and was either in the States of California or the State of Washington, and he had no detailed knowledge or information as to what was being done by the copartnership or the terms of the sale to the corporation. That said Wood's name was signed to the original subscription list without his knowledge or consent, and with the understanding of all the

subscribers that it was optional with the said R. C. Wood, on his return to Fairbanks, Alaska, to elect either to take stock in the new corporation or to receive money from the amount of stock to which he was entitled in lieu thereof.

That, in accordance with the instructions of the board of directors, the executive committee of said corporation proceeded to have the necessary papers and transfers made out, conveying the property of the copartnership to the corporation on the terms stated in the resolution of 5 January, 1908, and requested the then attorneys for the bank, McGinn & Sullivan, to prepare the necessary papers for that purpose. That, in compliance with said request, the said attorneys undertook to draw up an agreement, stating the true terms and conditions of the sale and transfer, which is the agreement attached to plaintiff's said amended complaint, and marked "Exhibit 1." That said agreement, through the mutual mistake of the copartnership and the corporation and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between the said Fairbanks Banking Company, a copartnership, and the corporation, in this, that said agreement failed to reserve to the said copartnership the accrued interest on all loans up to 15 March, 1908, and further in that it failed to embody the option given to said James W. Hill and R. C. Wood, either to take [107] stock for their portion of the surplus property of the copartnership or to take money, and that in the event of their election to take money the amount should be paid not later than July

1, 1908. That, with said exception, said agreement attached to plaintiff's amended complaint and marked as "Exhibit 1" fully sets forth the terms and conditions agreed on and entered into between the Fairbanks Banking Company, a copartnership, and the corporation.

That, in accordance with the true agreement had between the Fairbanks Banking Company, a copartnership, and the corporation, as set forth in a preceding paragraph thereof, the Fairbanks Banking Company issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued to said R. C. Wood. That said R. C. Wood returned to Fairbanks, Alaska, on or about 17 April, 1908, and at once notified the Fairbanks Banking Company, a corporation, of his election to take money in lieu of his stock, and said corporation then and there agreed thereto. That, on the return of the said R. C. Wood to Fairbanks, Alaska, he signed the agreement attached to plaintiff's amended complaint and marked as "Exhibit 1," with the understanding on his part and of the Fairbanks Banking Company, a corporation, that said contract reserved to him the right to take money in lieu of stock, and it was never contemplated or understood by the said R. C. Wood or by said corporation that, by signing said agreement, he would waive any right to the election that he had already made to take money in lieu of his stock. That said Wood, on or about 17 April, 1908, entered on his duties as cashier, and continued to act in said capacity until 12 May, 1908, when he

tendered his resignation to the Fairbanks Banking Company, with the request that he be relieved of his duties at once and that said request be acted on. That, on said resignation being presented to the [108] board of directors, it was the unanimous desire of all the directors present that the said R. C. Wood continue to act as cashier until said bank should get on a cash basis, said bank at said time being on what was known as a script basis. The said Wood thereupon continued as such cashier up to and until 29 June, 1908, when his resignation was accepted. That said Fairbanks Banking Company, a corporation, in accordance with its understanding of the agreement existing between it and the said R. C. Wood, subsequently paid to him the sum of thirteen thousand dollars, being the amount of stock that he was entitled to receive, under the terms of the agreement entered into between the copartnership and the corporation. That the board of directors and the officers of said bank, in paying said money to R. C. Wood, merely carried out the terms of the agreement entered into between the subscribers of stock and the copartnership on 5 January, 1908, and which was ratified as a part of the arrangement entered into between the copartnership and the corporation at the meeting of the board of directors held on 12 March, 1908.

That there was paid to said E. T. Barnette, James W. Hill, and R. C. Wood by the Fairbanks Banking Company the sum of \$39,642.81 on account of interest accrued on loans up to and until the 15th day of March, 1908. That this amount paid by said corpo-

ration to said Barnette, Hill and Wood, was done in accordance with the terms of the agreement made and entered into between the copartnership and the proposed incorporators on 5 January, 1908, save and except that the time thereof was subsequently extended by the board of directors from 15 February, 1908, to 15 March, 1908. That said contract so entered into between the proposed incorporators the copartnership was ratified by the corporation on 12 March, 1908, and the board of directors and officers of said corporation, in paying to the said Barnette, Hill, and Wood the said sum of \$39,642.81, merely carried out the terms of the agreement entered into between the corporation [109] and said persons, but, as hereinbefore stated, said provision was inadvertently and through mistake of the parties omitted from said contract attached to plaintiff's amended complaint and marked "Exhibit 1."

The defendants, particularly answering paragraph VI of said amended complaint, allege that the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a copartnership, was done by the stockholders of said corporation, and that the agreement entered into between the Fairbanks Banking Company, a copartnership, and the proposed incorporators, was long prior to the election of the board of directors, and that said board of directors, in authorizing the taking over of the property of the said Fairbanks Banking Company, a copartnership, on the terms agreed, was merely carrying out the instructions of the stock-

holders and such act was merely a ratification of the arrangements entered into between the stockholders of said corporation and the Fairbanks Banking Company.

Particularly answering paragraph VIII of said amended complaint, the defendant Wood alleges that he was not present at Fairbanks, Alaska, at the time that the price of said Gold Bar Lumber Company stock was agreed on, nor did he participate in any way in the sale of the same to the corporation. The defendant McGinn alleges that, at the time that said Gold Bar Lumber Company stock was accepted by the Fairbanks Banking Company, a corporation, for the sum of \$341,949.00, he honestly and in good faith believed that said property, so accepted, was worth said amount, and has, ever since said time, believed that said property, under favorable market conditions, is worth said amount. That, at the time that he became a stockholder of said corporation, he had no personal knowledge as to the value of said Gold Bar Lumber Company stock, and relied on the statements [110] and reports made to him by people who were personally acquainted with the property and also on the report of the board of trustees made on 16 December, 1908.

The defendant Wood, answering paragraph IX of said amended complaint, alleges that he was not in Fairbanks, Alaska, nor within the Territory of Alaska, at the time the notes and loans therein mentioned were taken over by the Fairbanks Banking Company, and that he did not participate in the sale or transfer of said notes and loans from the

copartnership to the corporation in any way. That he now believes that said notes and loans set forth in said paragraph IX were then collectible and were worth the amount for which they were accepted. The defendant McGinn, answering said paragraph, alleges that when he became a stockholder of said Fairbanks Banking Company, and during the time that he was acting as attorney for said Fairbanks Banking Company, he did not go through the loans and discounts of the bank to determine the value of said loans and discounts, nor if he had done so would he have been in a position to determine what the value of the loans and discounts was, but that he depended on the report of the officers of the institution and the report that the board of trustees made as to the loans and discounts of said bank.

And defendants, for a further and separate answer and defense, allege:

That the said E. T. Barnette, who is jointly charged with these defendants as to all the wrongs complained of in plaintiff's said amended complaint on file herein, was, during the time of all the transactions mentioned in said complaint, the president of said Fairbanks Banking Company, afterwards known as the Washington-Alaska Bank, and one of its directors.

That, at the time of the suspension of said bank, the said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, [111] returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said bank and with the then

receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against him on account of any of the matters and things set forth in the said amended complaint herein.

That, as a result of said negotiations and in full satisfaction of all the wrongs complained of in plaintiff's amended complaint, the said E. T. Barnette, on 18 March, 1911, executed an instrument in writing, in which he admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all the depositors and creditors of said bank in full, not later than 18 November, 1914, together with interest on all amounts due to creditors and depositors from said 4 January, 1911, until paid.

That Isabelle Barnette is the wife of said E. T. Barnette and the said Isabelle Barnette was desirous of aiding her said husband in the payment of the creditors and depositors of said Washington-Alaska Bank, and to that end joined her said husband in the promise to pay all the depositors and creditors of the said Washington-Alaska Bank, on the terms above expressed.

That said premises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or others for or on account of any of the matters and things set forth in the amended complaint. That, for this purpose and to prevent any litigation and as security for the faithful performance of the promises made by the said E. T. Barnette and Isabelle Barnette, the said Isabelle Barnette and E. T. Barnette,

on 18 March, 1911, with the knowledge, consent, and approval of this Court, conveyed to the receiver of said bank, and said receiver, by order of this Court accepted, the conveyance of title to an improved plantation, containing 18,723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and [112] lots situated in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situate in the Fairbanks Precinct, Territory of Alaska, all of which properties belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette, and are worth the sum of one million dollars, a sum greatly in excess of the unpaid debts and liabilities of said bank.

That, in said deed of said property situate in the Republic of Mexico, it is expressly provided that said receivers may sell all or any part of said land at private sale, on or after 18 November, 1914, for the purpose of raising funds with which to pay the claims of the depositors and creditors of said bank then remaining unpaid, and out of the proceeds thereof said receivers are directed to pay all the claims of depositors and creditors of said bank then remaining unpaid; and in said deed said grantors further authorize and empower said receivers to collect and receive the amount of \$226,025.00, payable 18 November, 1914, in case an option given 18 November, 1909, for the purchase of forty-nine per centum thereof is exercised by this time, and to apply such sum to the payment of said debts; and said

deed to property situate in the Territory of Alaska also gives said receivers power to collect and receive all the rents royalties and profits from the property therein described and to sell said property and to apply the amounts so received in payment of said debt.

That said receiver, plaintiff herein, holds a large amount of property belonging to said bank, which is of great value and has not been converted into money, and the property so held by him and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all claims, demands, and obligations of whatsoever nature now existing against said Washington-Alaska Bank of Nevada. [113]

That the then receivers of the said Washington-Alaska Bank agreed to accept, in full satisfaction of all the matters and things set forth in plaintiff's said amended complaint and sued on herein, the said promises and property of said E. T. Barnette and Isabelle Barnette, and the said E. T. Barnette and Isabelle Barnette made and executed said promises and conveyed said property in full satisfaction of all suits or causes of action then existing against him on account of any and all matters and things arising from his connection with the said Washington-Alaska Bank and in full satisfaction of all the matters and things set forth in the amended complaint herein, and the said receivers accepted and received said promises and said property in full satisfaction of all the claims and causes of action set up in said amended complaint of plaintiff herein.

And the defendants, for a further and separate answer, allege:

That, on 18 March, 1911, and for the express purpose of preventing litigation against him for and on account of the matters and things set forth in said amended complaint, and wherein it is alleged that the defendants herein are jointly liable with the said E. T. Barnette, the said E. T. Barnette and Isabelle Barnette, his wife, promised and agreed to pay to all the creditors and depositors of the said Washington-Alaska Bank not later than 18 November, 1914, all sums that should then be found to be due to them, with interest on said amounts from 4 January, 1911, until paid.

That, for the purpose of securing the faithful performance of said premises, the said E. T. Barnette and Isabelle Barnette with the consent and approval of this Court, deeded and conveyed to the said receiver a valuable improved plantation, containing 18,723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and lots situate in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining [114] claims situate in the Fairbanks Precinct, Territory of Alaska, all of which property belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette.

That, in said deed of the properties situate in the Territory of Alaska, the receiver was given power to collect and receive all rents, royalties, and profits therefrom, and to apply the amount received from

said properties in satisfaction of the claims of the creditors and depositors of said bank. That these answering defendants are informed and believe and so alleged that the said receiver has received as rents, royalties, and profits from the said property, approximately the sum of thirty-three thousand dollars and the value of the property held by the receiver and situate in the Territory of Alaska, other than the said sum of thirty-three thousand dollars, is of the value of not less than twenty-five thousand dollars.

That the amounts of money and property already received by the said receivers from the estate of the said E. T. Barnette are more than ample to pay all the matters and things charged against these defendants in the amended complaint of the plaintiff herein and answering defendants allege that all the wrongs and things charged against these defendants in the said amended complaint have been fully satisfied and paid.

Wherefore: These answering defendants pray;

(1) That the agreement attached to plaintiff's amended complaint and marked "Exhibit 1" be reformed so as to express the true agreement of the parties, as in answering defendants' answer hereinbefore set forth.

(2) That plaintiff take nothing by this action and that the defendants recover their costs and disbursements.

(3) That these answering defendants have such other and further relief as to the Court may seem

just and equitable in the premises.

JOHN J. MCGINN and

A. R. HEILIG,

Attorneys for Answering Defendants. [115]

Territory of Alaska,
Fairbanks Precinct,—ss.

John L. McGinn, being first duly sworn according to law, on his oath deposes and says:

I have read the foregoing answer, know the contents thereof, and believe the same to be true, and as to the matters and things alleged on information and belief I also believe the same to be true.

JOHN L. MCGINN.

Subscribed and sworn to before me, the undersigned, on this 27th day of September, A. D. one thousand nine hundred thirteen.

[Seal]

JOHN A. CLARK.

Notary Public in and for the Territory of Alaska.

My commission expires Apr. 24, 1914.

Due service of the within separate answer and receipt of a copy thereof are hereby acknowledged this 29th day of September, 1913.

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. Noyes, Plaintiff, vs. Jesson et al. Defendants. Answer.

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 29, 1913. C. C. Page, Clerk. By Angus McBride, Deputy. [116]

[Title of Court and Cause.]

**Demurrer to New Matter in Separate Answer of
Defendants Wood, Healey and McGinn.**

Comes now, the plaintiff and demurs to the new matter set up in the separate answer of the defendants R. C. Wood, J. A. Healey and John L. McGinn as follows:

1. He demurs to said new matter set up as a further separate and affirmative defense as a basis for reformation of contract for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

2. He demurs to the new matter set up in the last further and separate answer of these answering defendants, pleading, that the wrongs complained of against said defendants have been satisfied and paid in full by the rents, royalties and profits derived from the Barnette trust deed, for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

O. L. RIDER,
Attorney for Plaintiff.

Service of copy accepted this 2 day of October,
1913.

J. L. McGINN and
A. R. HEILIG,
Attorneys for Defendants Wood, Healey and McGinn.

[Endorsed]: No. 1756. F. G. Noyes, Receiver,
Plaintiff, vs. J. A. Jesson et al. Defendants. De-

murrer to Separate Answer of Defendants Wood, Healey and McGinn.

Filed in the District Court, Territory of Alaska, 4th Div., Oct. 2, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy. [117]

[Title of Court and Cause.]

[Order Overruling Demurrer to Third Separate Answer and Defense in Answer of John A. Clark, etc.]

Now, on this day, the demurrers to the separate answers of the defendants, John A. Clark, J. A. Jesson, Raymond Brumbaugh, E. R. Peoples, Jas. W. Hill, George Preston, R. C. Wood, J. A. Healey, and John L. McGinn, having previously been heard and submitted to the Court for its decision, O. L. Rider, in behalf of plaintiffs, and McGowan & Clark, and A. R. Heilig, in behalf of defendants, being present in open court; and the Court being duly and fully advised in the premises,

IT IS ORDERED, that the demurrer to the third separate answer and defense in the answer of John A. Clark is overruled, and the demurrer sustained as to the fourth separate answer and defense; that the demurrer is sustained as to the first and fourth separate answers of J. A. Jesson, Raymond Brumbaugh, E. R. Peoples and Jas. W. Hill, and overruled as to the third; sustained as to the fourth separate answer of Preston, and overruled as the third; and sustained as to the first separate further answer of R. C. Wood, J. A. Healey, and John L. McGinn,

and overruled as to the last one.

F. E. FULLER,
District Judge. [118]

[Title of Court and Cause.]

**Amended Answer of Defendants John A. Jesson,
Raymond Brumbaugh, E. R. Peoples, James W.
Hill, John A. Clark and George Preston.**

Comes now, the defendants, John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston, and by leave of Court first had and obtained, file the following as their amended answer to the amended complaint on the file herein, and admit, deny and allege as follows, to wit:

Allege that the terms of service of these defendants were not concurrent, save and except that the defendant John A. Jesson was a director of said bank at all the times between March 12, 1908, and the time of the suspension of said bank on January 4, 1911, and the terms of office of the other defendants, appearing herein covered various periods during said time of service of said John A. Jesson, the terms of office of said other answering defendants being as follows, to wit:

James W. Hill, from September 12, 1908, to September 12, 1909; E. R. Peoples, from Sept. 12, 1908, to April 24, 1909; Raymond Brumbaugh, from March 13, 1909, to September 12, 1910; John A. Clark from May 12th, 1910, to January 4, 1911; George Preston, from September 12, 1910, to December, 1910; and

said defendants above named whose terms of office were not co-extensive with the terms of said John A. Jesson, have not sufficient information, knowledge or belief as to the matters charged against the directors at the periods when said answering defendants were not directors, to enable them to admit or deny the allegations of said amended complaint, from personal knowledge, and all of said answering defendants, with the exception of John A. Jesson, basing their denials [119] upon such lack of information, knowledge or belief, save and except as hereinafter expressly admitted, deny each and every and all of the matters and things contained in said amended complaint, alleged to have transpired during the terms of office of the directors at the periods during which these answering defendants were not directors of said corporation, and

The defendant James W. Hill unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have happened during the period said James W. Hill was a director of said bank, as above set forth; the defendant Raymond Brumbaugh unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said Raymond Brumbaugh was a director of said corporation; the defendants E. R. Peoples unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said

E. R. Peoples was a director of said corporation; the defendant John A. Clark unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said John A. Clark was a director of said corporation; and the defendant George Preston unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said George Preston was a director of said corporation.

Subject to the limitations and conditions last above set forth, these defendants, for an amended answer to the amended complaint on file herein, and to the acts and things alleged to have been done and performed during their respective terms of office, admit, deny and allege as follows, to-wit: [120]

I.

Answering paragraph III of said amended complaint, these defendants deny that E. T. Barnette, R. C. Wood and James W. Hill circulated, or caused to be circulated, in the city of Fairbanks, or vicinity, or elsewhere, stock subscription lists, subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were, or are, in words and figures as set forth in paragraph III of said amended complaint.

II.

Answering paragraph IV of said amended complaint, these answering defendants admit that said E. T. Barnette signed said subscription list for four

hundred forty shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty shares of said capital stock, but deny that the same was signed or subscribed by the said R. C. Wood for two hundred twenty shares or any shares, and deny that said James W. Hill, R. C. Wood and E. T. Barnette caused said subscription lists to be circulated or that they circulated the same.

III.

Answering paragraph V of said amended complaint, defendants deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on 12 March, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held on 8 February, 1908; deny that on 12 March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, was elected; and deny that the said E. T. Barnette named or selected said board of directors, otherwise, than by placing the names of said [121] persons in nomination at the meeting of the subscribers and stockholders held 8 February, 1908.

IV.

Answering paragraph VI of said amended complaint, these defendants deny that, on 13 March, 1908, said board of directors authorized the acquisition or purchase of the Fairbanks Banking Company, a co-partnership, or the assets in business of said Fair-

banks Banking Company, a copartnership, otherwise than as in the further, separate and affirmative defense of these defendants hereinafter set forth. Deny, except as in the further and separate answer of these defendants hereinafter set forth, that the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a copartnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated 16 March, 1908, and deny that a true copy of the same is attached to the amended complaint and marked "Exhibit 1."

V.

Admit that there were issued to E. T. Barnette 260 shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1." Admit that there were 130 shares of the capital stock of said corporation issued to James W. Hill, but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defendants. Deny that there were ever issued to R. C. Wood 130 shares of the capital stock of said Fairbanks Banking Company. Admit that the assets of said copartnership, enumerated and described in said contract "Exhibit 1," were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants. [122]

VI.

Answering paragraph VIII of said amended complaint, these defendants deny that, at or immediately prior to the transfer of the assets of the Fairbanks Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,067.89, or a less sum than \$341,949.00. Deny that, at the date of said transfer, the value of said Gold Bar Lumber Company stock was a sum less than \$248,067.89, or was of a less value than the sum of \$341,949.00. Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased or grossly fraudulent or any over-valuation of more than \$93,881.11, or any sum whatsoever, and deny that the same or all of it was done or accomplished with the full knowledge, co-operation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Shephard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnell and John P. Anderson, or of the defendants R. C. Wood, James W. Hill, B. H. Dusenbury, and John L. McGinn; and deny that at said time, the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the Territory of Alaska. Deny that the business of the Gold Bar Lumber Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature, and deny that the capital stock of said Gold Bar Lumber Com-

pany was not delivered to said Fairbanks Banking Company, a corporation.

VII.

Answering paragraph IX of said amended complaint, these defendants deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation. Deny that, of the notes so sold or transferred to said corporation, a large amount was then past due, worthless or uncollectible paper was a sum in excess of \$53,000.00 or any sum; and deny that the same [123] are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph IX of said amended complaint, were worthless or uncollectible, or that the same are worthless and uncollectible; Deny that it was then and there well known to said defendants, directors, or officers aforesaid, or by each of them, or by the exercise of ordinary or of great care might have been so known to them or any or each of them, that the said notes listed in said paragraph IX of said amended complaint, were, at the time that the same were accepted by or transferred to the said Fairbanks Banking Company, a corporation, past due or worthless or without substantial value.

VIII.

Answering paragraph X of said amended complaint, these defendants deny that, for the 1502 shares of the capital stock of said corporation, issued on 14 March, 1909, the same were all paid for by promissory note, but allege that some were paid for in cash. Deny that a large amount of said notes

was, or still is, worthless or uncollectible, or that the same has never been paid, and deny that the amount of said worthless and uncollectible notes is of the face value of \$22,982.33 or any other sum.

IX.

Answering paragraph XI of said amended complaint, these defendants deny that there was an issued capital stock of \$202,200.00 or a greater sum than \$189,200.00. Deny that, with no other assets than those of the Fairbanks Banking Company, a copartnership as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200.00 the Fairbanks Banking Company, a corporation, commenced business as a bank. Deny that the amounts and the assets set forth in said paragraph XI constituted all of the assets of said Fairbanks Banking Company, a corporation. Deny that the sum of \$200,000.00 belonging to E. T. Barnette was an alleged special deposit, and deny that the same was not in fact deposited by said E. T. Barnette. [124]

X.

Answering paragraph XII of said amended complaint, these defendants deny that, on 16 March, 1908, when said Fairbanks Banking Company, a corporation, commenced business, said corporation was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts; but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations. Deny that the actual insolvency of said bank was then known to the direc-

tors or officers of said institution hereinabove mentioned, or that, by the exercise of great, ordinary, or other care, might have been known. Admit that said bank on 16 March, 1908, was on a scrip basis, but allege that all the other banks in the Fairbanks Precinct, and the major portion of the banks throughout the United States, were upon the same scrip basis owing to the financial flurry in existence at that time.

XI.

Answering paragraph XIII of said amended complaint, these defendants deny that said bank, or the defendants mentioned in said amended complaint, or the officers, directors and employees of said bank, at all times or any times falsely and wrongfully, or otherwise, represented or held out to the public generally, or otherwise, that said Fairbanks Banking Company, a corporation, had paid up capital stock of \$300,000.00.

XII.

Answering paragraph XIV of said amended complaint, these defendants allege that they are informed and believe, and basing their denial on such information and belief, deny that John L. McGinn was a director of said bank from and including 13 September, 1909 to 12 May, 1910. Deny that John L. McGinn and R. O. Wood, or either of them, continued to act as directors of said bank subsequent to the first day of May, 1910.

XIII.

Answering paragraph XVII of said amended complaint, these defendants deny that the defendant L.

N. Jesson acted as an executive [125] officer of said corporation, or as a member of the executive committee thereof, until 12 September, 1910, or any other time.

XIV.

Answering paragraph XVIII of said amended complaint, these defendants admit that, at the meeting of the board of directors, held 12 March, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered on the duties as cashier prior to 17 April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until 29 June, 1908, but allege in this connection that on 12 May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but at the request of the board of directors continued to act as cashier until 29 June, 1908.

XIV.

Answering paragraph XIX of said amended complaint, these defendants deny that, shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof, or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the dates of surrender and the number of shares surrendered and the names of the parties surrendering or the amount of cash or subscription notes returned thereof, is as

is set forth in the list set out in said paragraph XIX of the amended complaint. Deny that the defendant R. C. Wood ever surrendered any issued capital stock to said Fairbanks Banking Company, a corporation, and deny that he was ever the owner of the same. Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor. [126]

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge, consent or approval of the defendants or each of them who constituted its board of directors or officers, on the dates set forth in said paragraph XIX, or that, by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surren-

dered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the board of directors of said bank, or with the knowledge, consent, or approval of the defendants.

Deny that James W. Hill was a director at any time after September 12, 1909; deny that E. R. Peoples was a director at any time after April 24, 1909; and deny that George Preston was a director at any time after December, 1910.

XIV-A.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2,020 shares of the capital stock of said corporation on the 4th day of March, 1908, or a greater amount than 1,892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital stock never exceeded 2,156 shares, or after the 9th day of November, 1909, never exceeded 726 shares, these defendants have no knowledge or information sufficient to form a belief, and therefore deny the same. [127]

XIV-B.

Answering paragraph XXI of said amended complaint, these answering defendants deny the allegations therein contained, save and except that they admit that the interest was computed on the loans of the old Fairbanks Banking Company up to March 15, 1908, and that the board of directors on March 12, 1908, authorized and directed that the interest on the notes and discounts be so computed and be

payable on or before December 31, 1908, and that the said amount was as alleged in said paragraph, and was credited on the "old bank interest account"; and admit the issuance to R. C. Wood of the certificate of deposit alleged therein; admit the withdrawal of five thousand dollars by said defendant Hill; admit the credits placed to E. T. Barnette, James W. Hill and R. C. Wood; and admit the payment of said sum to them; and admit that the money was paid from the funds of the bank regardless of whether or not it had been collected from the makers of said notes.

XIV-C.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70,040.10 of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value. Deny that said Fairbanks Banking Company, a corporation, with the *excess* knowledge, consent or approval of the defendants in said paragraph XXIII mentioned, the then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for

said capital stock thereof, a premium or bonus or more than \$100,000.00 or any other sum over and above the then paid-in capital stock of [128] the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz.: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank.

XIV-D.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was

controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time and prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own board of directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Company, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00, and in this connection these defendants allege that the directors of said Washington-Alaska [129] Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management of the defendant R. C. Wood, otherwise than as has been set forth in the preceding paragraph. Admit that the amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66,839.16 to \$57,169.76, but deny that said decrease was a net loss of \$9,669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some

bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57,169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets, loans and discounts past due without substantial value, or which had not yet been collected or cannot be collected, amounting to the sum of \$76,005.35, or *an* other amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00, but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

XIV-E.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then board of directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of \$1,686,00 a dividend of twenty per centum, amounting to \$33,720.00.

XIV-F.

Answering paragraph XXVII of said amended complaint, these defendants deny that, on 12 April, 1910, or at or before the time when said dividend mentioned in the preceding paragraph was ordered [130] to be paid, the said Fairbanks Banking Company, a corporation, was, or long prior thereto

had been, in a grossly insolvent or failing condition, Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus, or undivided profits on hand, out of which said dividend could legally be paid, and deny that, at or prior to said date, said Fairbanks Banking Company, had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the assets carried by the Fairbanks Banking Company on its books of \$75,000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet been paid, or that cannot be collected, in a sum amounting to \$118,250.47, or any other sum. Deny that the capital stock of the Gold Bar Lumber Company originally had been, or still was on said 12 April, 1910, fraudulently over-valued by a sum in excess of \$93,881.11, or any sum. Deny that said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W.

Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson, was a member of the executive committee of said corporation), or of R. C. Wood (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks Banking Company, a corporation, owed to depositors the [131] sum of \$960,689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

XIV-G.

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood, and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and John L. McGinn was claimed to have been made under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking

Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered into without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for any entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit, and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was done, suffered, or permitted by and with the knowledge, consent, or approval of all the then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum, to wit, in a sum in excess of \$25,000.00, or any sum.

XIV-H.

Answering paragraph XXIX of said amended complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge, [132] or means of knowledge, of the grossly insolvent and failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Bar-

nette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw in cash the whole of said alleged special deposit of two hundred thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent, and approval of the then board of directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

XV.

Answering the allegations of paragraph XXX of said amended complaint, these answering defendants admit the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the

manner therein set forth, but allege that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of their lack [133] of information and belief in the matter, deny that there was owing to the said depositors the sum of \$947,800.29.

Further answering the allegations of said paragraph XXX these answering defendants deny that said Washington-Alaska Bank of Washington *and* no undivided profits on hand at the time of said consolidation, and avers, that, as they are informed and believe, and therefore so allege on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4,658.92; that answering defendants are informed and believe and basing their denial on such information and belief, deny that the capital stock of the said Washington-Alaska Bank of Washington was seriously impaired, or impaired in any way, as alleged in said paragraph, or at all; deny that said bank had on hand at said time loans and discounts in the sum of \$100,704.98, which were bad, worthless, and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; allege that they have no information or belief as to whether the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington at their face value or at their present worth, and allege that they have no information or knowledge as to whether said notes have been paid, but are informed and believe that a portion of said notes

has since been paid, and basing their denial on such information and belief and lack of information, deny that the notes of the face value of \$100,704.98, carried by the Washington-Alaska Bank of Washington on its books on the 1st day of October, 1910, have not been paid; deny that, on the 1st day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100,704.98, carried on the books of the Washington-Alaska Bank of Washington were worthless, or bad, or uncollectible, or that any material portion thereof was so worthless, or bad, or uncollectible; admit that after said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the [134] town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and deny that, at all times after the first day of October, 1910, or at any time after said 1st day of October, 1910, said directors, wrongfully, fraudulently, and without right, or wrongfully, or fraudulently, or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock, \$75,000.00"; admit that said item was carried on the books, as therein set forth, but deny that said asset had no existence whatsoever, or that the same was purely imaginary, false, and fraudulent, or imaginary, or false, or fraudulent.

XVI.

Answering the allegations of paragraph XXXI of said amended complaint, these answering defendants

admit that, subsequent to the 1st day of October, 1910, and up to and including the 4th day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but deny that said bank was, during said time, insolvent and in a failing condition or insolvent, or in a failing condition, as alleged in said paragraph; admit the institution of the action entitled Tanana Valley Railroad Company, a corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, the appointment of F. W. Hawkins as receiver; that he thereafter qualified and entered upon his duties on the 5th day of January, 1911, and that thereafter on January 6, 1911, said District Court, by order duly entered, appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and that said Mack thereupon duly qualified and entered upon the discharge of his duties as such receiver, and that said Hawkins and Mack thereafter continued to act as joint receivers of said Washington-Alaska Bank until the 12th day of May, 1911; admit their resignation on the 12th day of May, 1911, and admit the appointment of F. G. Noyes as receiver of said Washington-Alaska Bank, but deny each and every other matter and thing therein contained, and specifically deny [135] that the allegations therein contained that "said F. G. Noyes thereupon duly qualified as such receiver and ever since has been and now is the duly qualified and acting receiver of Washington-Alaska Bank."

XVII.

Answering the allegations of paragraph XXXII, these answering defendants aver that they have no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the 4th of January, 1911, as alleged in said paragraph, but deny that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of these answering defendants, or of the board of directors of which these defendants were members, rendered insufficient to pay said liabilities in full, and deny that the assets of said bank were impaired, injured, or rendered insufficient to pay the liabilities of said bank, by reason of any act or thing done by these answering defendants, or their codirectors during the times these defendants were members, respectively, of said board of directors.

XVIII.

Answering the allegations of paragraph XXXIII of plaintiff's said amended complaint, these answering defendants deny that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admit that there have been paid on the acknowledged and proven liabilities of the bank, dividends aggregating fifty per centum, and answering defendants allege that they have no knowledge or information as to whether or not \$12,627.70 of said dividends have either not been called for or have been withheld by order of Court; and answering defendants are informed and believe, and therefore so allege, that a portion of the claim of

the Dexter Horton National Bank of Seattle has been paid, and basing their denial on such information and belief, deny that there is due or owing to said Dexter Horton National Bank of Seattle the sum of \$128,899.37, but allege that they have no knowledge of how much is due to said bank; answering defendants further allege that [136] they have no information as to whether creditors to the amount of \$4,132.62 have failed to prove their claims or have not demanded dividends.

XIX.

Answering the allegations of paragraph XXXIV, these answering defendants admit that, on the 4th day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle, a large sum of money, the exact amount of which is to these answering defendants unknown, and admit the remainder of said paragraph.

XX.

Answering the allegations of paragraph XXXV of plaintiff's amended complaint, these answering defendants deny that the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and allege that they have no information or belief as to whether or not F. G. Noyes as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum what-

soever; so neither admit nor deny said allegation; answering defendants are informed and believe, and basing their denial on such information and belief, deny that the stock of the Gold Bar Lumber Company has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and deny that any valuation in excess of said sum is wholly uncertain and speculative.

XXI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, these answering defendants allege that they have no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver, other than the Gold Bar Lumber Company stock. as alleged in said paragraph, sufficient to form a belief, and expressly deny that there are not now in the hands of the receiver, and were not in the hands of said receiver at the time of the filing of said complaint, other assets [137] than the assets set forth in said paragraph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31 are not of that value, these answering defendants allege that they have no information or knowledge sufficient to form a belief as to said matters, and basing their denial upon such lack of information and belief, deny the same. Deny that only \$80,000.00 thereof is owing from solvent debtors and can be collected, and deny that the balance thereof is bad, worthless, and uncollectible, or bad, or worthless, or uncollect-

ible. Answering defendants allege that they have no knowledge as to the actual cash or market value of the real estate, furniture, and fixtures, sufficient to form a belief in order to enable them to admit or deny the same,

XXII.

Answering the allegation of paragraph XXXVII of plaintiff's said amended complaint, these defendants deny the matters and things therein set forth.

XXIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, these answering defendants deny each and every matter and thing therein contained.

XXIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, these answering defendants deny each and every matter and thing therein contained.

James W. Hill expressly denies that he was a director of said bank at any time after the 12th day of September, 1909, and alleges that he resigned as such director on or about the 12th of September, 1909, and left the Territory of Alaska about the 19th day of September, 1909, and did not return thereto until after the suspension of said bank, and did not participate in any meeting of any of said directors after his said resignation.

E. R. Peoples, particularly answering paragraph XXII of said amended complaint relating to the purchase of the Washington-Alaska [138] Bank, alleges that he did not participate in said purchase and that he was not a director and was not present

at the meeting of the board of directors when said purchase was made, and that his resignation as such director had been sent in on the 24th day of April, 1909, to the secretary of said bank, and that at said time he sold his stock and was no longer a director and did not participate in any meeting of said directors thereafter.

For a further, first and separate affirmative answer and by way of a defense, these answering defendants allege as follows, to wit:

That at all the times mentioned in plaintiff's amended complaint, to wit, from the time of the organization of the Fairbanks Banking Company, a corporation, under the laws of the State of Nevada, in the month of March, 1908, up to and including the 4th day of January, 1911, E. T. Barnette was a member of the board of directors and president of said corporation, was the active head thereof, and was at all times thoroughly conversant with the affairs of said bank.

That one of the principal assets of said bank, to wit, three-fourths of the capital stock of the Gold Bar Lumber Company, a corporation, organized under the laws of the State of Washington, was carried on the books of the bank at a sum of \$341,941.00, and was purchased by the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, R. C. Wood, and James W. Hill. and was, as these answering defendants are informed and believe and so allege, purchased by said E. T. Barnette for said copartnership, and he was at all times familiar with the affairs of said corporation known as the Gold

Bar Lumber Company, and with the value of its properties, the extent and variety of its assets and the amount of its liabilities, and knew the value of said stock.

That during the greater part of the time that said E. T. Barnette was a director of said corporation and president thereof, he was actively engaged in mining in the Fairbanks Precinct in the Territory of Alaska, and was familiar with the financial standing [139] and moral responsibility of the majority of men who were carrying on mining operations or engaged in business in said Fairbanks district, and as answering defendants are informed and believe, and so allege, passed on and gave his judgment on most of the loans that were made during the time that he was president of said bank while in the Territory of Alaska.

That with the exception of two other directors, said E. T. Barnette is the only director who was a director from the time of the organization of said bank until its close, and he was, at all times during the existence of said banking corporation, recognized by the public at large as a man of wealth, and these answering defendants are informed and believe and so allege, that a great deal of the business of said bank was acquired by, through, and by reason of the personal friendship between depositors and other persons doing business with said bank and the said E. T. Barnette, and that he alone of all the directors, answering defendants, here, had personally visited the properties of the Gold Bar Lumber Company and has first-hand knowledge and information as to

their value and the condition thereof.

That none of the other directors of said bank were paid any salary, and all the other directors were men engaged in other lines of business and who served as directors more from a sense of duty than for gain. That said E. T. Barnette was the only one who was in a position to devote any considerable portion of his time to the affairs of said bank, and the said E. T. Barnette had an office in said bank, and the officers and employees of said bank were subject to receive orders from him, within the limits prescribed by the by-laws of said banking corporation, and all the books, records, loans, notes, and discounts of said bank were readily accessible to him, and all the affairs of said bank were by him thoroughly understood.

That at the time of the suspension of said bank, the said E. T. Barnette was not in the Territory of Alaska, but was in the State of California, and after the suspension of said bank and about the month of February, 1911, and long prior to the commencement of [140] this action, after he had been advised that said bank had been suspended and receivers appointed therefor, the said E. T. Barnette voluntarily returned to Fairbanks, and entered into negotiations with the then receivers of said bank with the purpose of arranging for the payment of any indebtedness that might remain due to the creditors of said bank after the assets of said bank had been realized on, and to that end he proposed to said receivers that he would deposit with them income-bearing and other properties greatly in excess of the

amount that would be required to satisfy and pay all sums that would remain due to the creditors of said bank after the collection of the notes due to said bank and the realization by said receivers on the assets of said bank other than notes and mortgages, and at said time said E. T. Barnette submitted a proposition in writing to said receivers, wherein he acknowledged that he himself was liable for any irregularities that might have occurred in the management of said bank and for any loss that had been sustained by reason of any of the acts and things that are in plaintiff's said amended complaint alleged to have been performed and done by the directors and officers of said bank, and the said E. T. Barnette then and there promised and agreed to pay all sums that might be necessary to be paid in order to settle the claims of the creditors in full, together with interest on said indebtedness at the rate of six per cent per annum from the time of the suspension of said bank.

That by reason of said offer and on or about the 18th day of March, 1911, said E. T. Barnette executed and delivered to said receivers of said bank an instrument in writing, termed and designated a trust deed, wherein he acknowledged his liability for the payment of the amounts due to the depositors and holders of unpaid drafts issued by said bank, as well as any other indebtedness of said bank for which he might be liable, by reason of any mismanagement on his part as president and one of the directors of said corporation, which said deed conveyed to said receivers and their successors, in interest, in trust for the purposes therein specified, certain improved

rural property situate in the Republic of Mexico, certified copy of which deed is now in the possession of the plaintiff in the [141] above-entitled action, and to which reference is hereby specifically made for more particular description thereof.

That, at said time and place, the said E. T. Barnette and Isabelle Barnette, his wife, executed and delivered to said receivers a trust deed, conveying all the real property of every nature and description situate in the Fairbanks Precinct, Territory of Alaska, to which said E. T. Barnette and Isabelle Barnette, had title, which said property consisted in income-producing mining claims and income-producing town property situate in the Town of Fairbanks, Territory of Alaska, which said deed was in the same form as the Trust Deed last hereinabove referred to, save and except that it was provided therein that all moneys derived as rentals from any of the said town property and as royalties from said mining claims should be collected by said receivers and disbursed and paid out *in* the creditors of said bank at any time on the orders of the District Court.

That said Isabelle Barnette was never at any time a director of said bank or in any way liable for any of its said indebtedness and she joined in said transfer and in said petition to the Court to accept said trust deeds by reason of the love and affection she bore for her said husband and to assist him in paying the indebtedness of said bank.

That as these answering defendants are informed and believe and so allege, said deeds were delivered for the express purpose of securing the payment not

only of the depositors and the holders of the unpaid drafts, but also all other indebtedness of every nature and description owing by said bank at the time of its suspension, together with interest at the rate of six per centum per annum from the time of its said suspension.

That the said E. T. Barnette in said instrument, agreed as promised to pay said depositors and holders of unpaid drafts in full for all sums due to them, with interest as aforesaid, not later than the eighteenth day of November, 1914.

That thereafter the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska referred said application to the receivers for their consideration, and they thereafter, [142] after considering said proposition and taking up the matter with the attorney for said receivers, appointed by the Court, petitioned the Court for leave to accept said securities, subject to the terms and conditions therein specified, for the uses and purposes therein set forth.

That, thereafter, the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska, in writing, authorized and directed said receivers to receive the said deeds and to enter into possession of the properties situate in the Fairbanks Precinct, subject to the terms and conditions set forth in said written proposition of said E. T. Barnette and Isabelle Barnette and the terms and conditions of said trust agreement.

That these answering defendants are informed and believe and so allege that, at the time said proposi-

tion was made by said E. T. Barnette and Isabelle Barnette, his wife, the attorneys for the receivers of said bank had prepared a complaint against said E. T. Barnette and some of the other directors of said bank, charging the said E. T. Barnette and said other directors with most, if not all, the alleged wrongful acts contained in plaintiff's amended complaint herein, together with other alleged wrongful acts, and was about to file said complaint with the Court and serve said defendants, for the purpose of recovering from the said E. T. Barnette and other directors of said bank any damages that might have been sustained by the said bank by reason of the said alleged wrongful acts of said E. T. Barnette and the said other directors.

That when said deeds were executed by the said E. T. Barnette and Isabelle Barnette, and were ordered by said Court to be accepted by the said receivers, it was understood by the said receivers, by the attorney for said receivers and by said E. T. Barnette that the execution of said deeds, the delivery thereof, and their acceptance by the said receivers was to be in full settlement of all claims of every nature and description that might then exist against said E. T. Barnette and the other directors by reason of or because of any of the acts and things done and performed by the said [143] directors, including the said E. T. Barnette, during the time of his incumbency in office, and these answering defendants are informed and believe and so allege that said deeds were so accepted as a full release and discharge of all liability of said E. T. Barnette and his codirectors,

for any and all alleged wrongful acts and things done or performed from the time of the organization of said corporation, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, until the time of its suspension.

That immediately after the execution of said instrument, as these answering defendants are informed and believe and so allege, said receivers entered into possession of the real property so deeded to them by said E. T. Barnette and Isabelle Barnette, and proceeded to collect all rentals due and to recover all royalties that thereafter became due to said E. T. Barnette from any of the mining claims by him deeded to said receivers, and received and collected all moneys that were due to said Isabelle Barnette as rentals from any of the properties deeded by her to said receivers, and as these answering defendants are informed and believe and so allege said receivers and their successors in interest, to wit, plaintiff in this action, have received from the rentals of the properties as deeded to them and as royalties from the mining claims deeded to them, a large sum of money, to wit, upwards of thirty thousand dollars, which said money is now in the possession of said receiver, plaintiff in this action, and subject to be distributed to the creditors of said banking corporation now in the hands of said receiver.

That in said deeds of E. T. Barnette and Isabelle Barnette to the properties in the Fairbanks district, it was also provided that any of said property could be sold at any time on the agreement of said E. T. Barnette and Isabelle Barnette and the said re-

ceivers, and as these defendants are informed and believe and so allege, certain property so covered by said transfer has in fact been sold by the receiver and said E. T. Barnette, under and by virtue of the terms of said agreement, and the moneys realized from the sale thereof have [144] been delivered to the receiver, plaintiff in this action, and are now in his hands.

That the properties conveyed by said E. T. Barnette and Isabelle Barnette consisted in improved and income-producing properties, the last situated in the business section of the town of Fairbanks, Alaska, the rental of which is unknown to these answering defendants, but which they are informed and believe and so allege amounts to approximately six hundred dollars a month, and all the property so conveyed, did at the time of said conveyance belong to said E. T. Barnette and Isabelle Barnette, and is, as these answering defendants are informed and believe, and so allege, worth the sum of not less than one million dollars, and said sum is greatly in excess of the debts and unpaid liabilities of said bank and was greatly in excess thereof at the time of the institution of this action.

That these answering defendants are informed and believe and so allege that said deeds were accepted in full accord and satisfaction of all liabilities of said E. T. Barnette as president and director of said bank, from the time of its organization until its suspension, and of his codefendants during the several periods of their incumbency during the periods last above set forth, and was made for the express pur-

pose of preventing the wasting and dissipating of the assets of said corporation in the prosecution of suits for the purpose of attempting to enforce said alleged liability against said directors, including said E. T. Barnette, and against said E. T. Barnette as president of said bank, and was in full accord and satisfaction of all acts and things done and performed by all officers of said bank other than the directors thereof.

That said trust, as these answering defendants are informed and believe and so allege, has been partially executed, and in the event that said receiver has not realized sufficient moneys on the assets of said corporation before the 18th day of November, 1914, to pay all the indebtedness of said corporation, the said E. T. Barnette will pay said remaining indebtedness, or will permit said properties deeded in trust, to be sold and the entire proceeds, or so much thereof as may be necessary, applied in full satisfaction of all outstanding indebtedness and liabilities of said bank, together with [145] interest at the rate of six per centum per annum from the time of the suspension of said bank until said indebtedness is paid in full.

That, as these answering defendants are informed and believe and so allege, at the time of the execution of said trust deeds and the time of the delivery thereof to said receivers, practically the only indebtedness of said bank, other than the indebtedness due to said depositors and the holders of unpaid drafts, was a certain claim due to the Dexter Horton National Bank of Seattle, State of Washington, in a sum in excess of one hundred twenty thousand dollars, but

that said claim was supposed to be secured by reason that said Dexter Horton National Bank had in its possession, and was claiming that it held as security, all the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, which said stock was then and there recognized by said receivers and the attorney for said receivers and the Court as being of a value greater than sufficient to pay said claim of said Dexter Horton National Bank, and that if said stock was held as collateral security for said loan, if said pledge was foreclosed, and the said stock of the Gold Bar Lumber Company sold, it would more than pay the indebtedness due to the said Dexter Horton National Bank, and by reason thereof, no reference was made in said trust deed to the indebtedness, other than the indebtedness due to the depositors and to the holders of unpaid drafts.

That, after the delivery of said trust deeds as aforesaid, the then receivers of said bank abandoned all idea of instituting a suit against said E. T. Barnette or any other directors of said bank, and no suit was instituted by them during the time that they were in office, and it was not until the present receiver plaintiff in this action was appointed that any suits or actions were instituted and when this action was instituted said E. T. Barnette was not joined as a party defendant and no attempt was made to hold him liable for any of the alleged malfeasances in office.

That since the time of the institution of said action, the said E. T. Barnette has twice, at least, and for protracted periods, [146] been within the Ter-

ritory of Alaska, and within the jurisdiction of this Court and could have been served with process.

That by reason of the acceptance of said deeds by said receivers, the execution thereof, and the receipt of income from from improved income-bearing properties, all of which was, as these answering defendants are informed and believe, and so allege, accepted in full accord and satisfaction of all alleged wrongful acts performed by said E. T. Barnette and other directors of said bank, including these answering defendants, and by reason of the release of said E. T. Barnette as a joint tort feisor, these answering defendants are released from all liability of every nature and description whatsoever under and by reason of or by virtue of any of the acts or things done or performed while a director of said Fairbanks Banking Company, afterwards Washington-Alaska Bank, as alleged in the said amended complaint of plaintiff herein, or otherwise.

For a further, second separate affirmative answer and by way of defense, these answering defendants allege as follows, to wit:

That these answering defendants do not admit any liability for any act or thing charged against them in plaintiff's said amended complaint, but allege that, during the whole time that these answering defendants were directors of said bank, said E. T. Barnette was likewise a director and was the president of said bank.

That subsequent to the closing of said bank and prior to the institution of this action, said E. T. Barnette and Isabelle Barnette, his wife, for the purpose

of settling any liability of said E. T. Barnette and these answering defendants by reason of, or under or by virtue of any acts or things done or performed by said E. T. Barnette or the board of directors of said bank, or by these answering defendants during the time that they were directors of said bank, executed and delivered to the receivers of said bank a deed to certain income-producing properties situate in the town of Fairbanks, Alaska, and on the creeks adjacent thereto in the Fairbanks Precinct, and paid to them certain moneys from the sale of said properties [147] in the town of Fairbanks, and said receivers have, since said time, been paid as rents and the royalties from said properties the sum of more than thirty thousand dollars, as defendants are informed and believe and so allege, which said sum was paid by said E. T. Barnette for the purpose of settling the alleged liability of these answering defendants and his codirectors by reason of any acts or things done or alleged in plaintiff's said amended complaint to have been wrongfully done by them during the time they were directors of said bank.

That answering defendant, John A. Jesson, alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes, and so alleges, for the purpose of discharging and settling in full any and all lia-

bility, against this defendant if any exists.

That answering defendant E. R. Peoples alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant, if any exists.

That answering defendant James W. Hill, alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth was paid, as said defendant is informed and believes and so alleges, for the purpose of [148] discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant Raymond Brumbaugh alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges,

for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant John A. Clark alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by R. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was *said* as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant George Preston alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That by reason of the payment in full of all sums with which these answering defendants could be charged, as set forth in plaintiff's said amended complaint herein, these defendants are discharged from any and all liability and any and all damage occasioned to said bank by reason of any of the alleged wrongful acts and things [149] done and per-

formed by these defendants while a director, and said liability, if any exists, has been paid and settled in *dull* by said E. T. Barnette, who is jointly responsible therefor.

WHEREFORE these answering defendants pray that the plaintiff take nothing by his amended complaint, and that they have judgment for their costs incurred herein.

McGOWAN & CLARK,
Attorneys for said Defendants.

A. R. HEILIG,
Of Counsel for E. R. Peoples.

United States of America,
Territory of Alaska,—ss.

John A. Clark, George Preston, and E. R. Peoples, being first duly sworn, on oath depose and say, each for himself and not one for the other. I am one of the defendants making the foregoing amended answer, and make this verification in behalf of myself and my codefendants; that I have read same, know the contents thereof, and the statements therein made are true, as I verily believe.

JOHN A. CLARK.
GEO. PRESTON.
E. R. PEOPLES.

Subscribed and sworn to before me this April 21, 1914.

[Seal] ESTELLE FITTS,
Notary Public in and for the Territory of Alaska.
My commission expires Dec. 23, 1917.

Due service of the within amended answer and

receipt of a copy thereof are hereby acknowledged this 21st day of April, 1914.

O. L. RIDER,
Attorney for Plaintiff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, etc., Plaintiff, vs. John A. Jesson, et al., Defendants. Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and Geo. Preston.

Filed in the District Court, Territory of Alaska, 4th Div. Apr. 21, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [150]

[Title of Court and Cause.]

Reply to Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston.

First.

Comes now, the plaintiff and for reply to the amended answer of the above-named defendants says that he denies each and every allegation and statement of new matter therein contained except those hereinafter specifically admitted.

Second.

For reply to the first and separate answer of defendants, he denies each and every allegation therein contained, except those hereinafter expressly admitted or otherwise denied.

He admits that E. T. Barnette was a member of the board of directors and president of the Fairbanks Banking Company, a corporation, as stated, and that he was thoroughly conversant with the affairs of said bank.

He admits that the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation at \$341,949.00 and that the same was one of the principal assets of said bank; that the same was originally purchased by the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, James W. Hill and R. C. Wood. As to whether or not the said Barnette was at all times familiar with the affairs of the said Gold Bar Lumber Company, a corporation, and with the value of its properties, and the extent and variety of its assets, the amount of its liabilities, and knew the value of its stock, this plaintiff has neither knowledge nor information sufficient to form a belief. [151]

He admits that the said Barnette was actively engaged in mining in the Fairbanks Precinct during the time he was a director and president of the Fairbanks Banking Company, a corporation, and was familiar with the financial standing and moral responsibility of the majority of the men who were carrying on mining operations or engaged in said Fairbanks district, but as to whether or not he passed on and gave his judgment on most of the loans that were made during the time he was president of said bank, while in the Territory of Alaska, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that with the exception of two other directors, the said Barnette is the only director who was director from the time of the organization of said bank until its close, and that he was recognized by the public at large as a man of wealth, and that a great deal of the business of said bank was acquired by reason of personal friendship between depositors and other persons doing business with said bank and the said Barnette. As to whether or not the said Barnette alone of all the directors had personally visited the properties of the said Gold Bar Lumber Company and had first hand knowledge of their value and condition, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that none of the other directors of said bank received a salary as directors, and alleges that said Barnette received no salary as director. Admits that said other directors were engaged in other lines of business, and alleges that the said Barnette was also. As to whether or not the said Barnette was the only one in position to devote any considerable portion of his time to the affairs of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that said Barnette had an office in said bank, and that the officers and employees of said bank were subject to receive orders from him within the limits prescribed by the by-laws of said bank, and that the books, records, loans, notes and discounts of said bank were readily accessible to him, and [152] that the affairs of said bank were thoroughly understood by him. He alleges that said books, records,

loans, notes and discounts were also readily accessible to any other officers of *director* of said bank.

He admits that the said Barnette was not in the Territory of Alaska at the time of the suspension of said bank, and that in the month of February, 1911, and after he had been advised that said bank had suspended and receivers appointed therefore, he returned to Fairbanks. At to any negotiations between the said Barnette and the then receivers of said bank, or the purpose thereof, or as to any proposition made by said Barnette to said receivers, or as to any promise or agreements made by the said Barnette to said receivers, other than as the same are evidenced by the deeds of trust referred to in said first separate and affirmative answer, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the execution by said Barnette and the delivery to said former receivers of said bank of the deed of trust to property situate in the Republic of Mexico and set out in said first separate and affirmative answer of said defendants for the purposes specified in said deed of trust and admits that the plaintiff has a copy of the same.

He admits the execution by said Barnette and wife, and the delivery to said receivers of a certain deed of trust to the real property therein described situate in Fairbanks Precinct, Alaska, upon the terms and conditions and for the uses and purposes set forth in said deed of trust.

He admits that the said Isabelle Barnette was never a director of said bank and in no way liable for any of its said indebtedness. As to the reason why

she joined her husband in said deed of trust and in said petition to the Court, this plaintiff has neither knowledge nor information sufficient to form a belief.

This plaintiff alleges that said deeds of trust are in writing and express for themselves the terms and conditions thereof, [153] the uses and purposes for which they are executed and delivered, and the admissions, agreements and assumed obligations of the said Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the express terms of said deeds.

He admits that the Judge of the District Court for the Fourth Judicial Division of Alaska at that time, referred the application of the said Barnette and wife for the acceptance of said deeds of trust to the then receivers for their consideration.

He admits that thereafter said Judge in writing authorized said receivers to receive said deeds and enter into possession of the properties situate in Fairbanks Precinct.

As to whether or not the attorneys for the then receivers had prepared a complaint against said Barnette and the other directors of said bank at the time the proposition of the said Barnette and wife was made, charging the alleged wrongful acts contained in plaintiff's complaint on the grounds and for the purposes set forth in said answer, and were about to file the same with the Court and serve said defendants, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the said former receivers entered into the possession of the real property in the Fair-

banks Precinct and proceeded to collect the rentals and royalties therefrom, and that there has been received by said receivers and their successors in office, this plaintiff, from the rentals and royalties on said property a large sum of money, the gross *amount is* upwards of \$30,000.00 as stated, which he is holding subject to the terms and conditions of said trust deed.

This plaintiff further admits that in the deed of the said Barnette and wife to the property in said Fairbanks District, it is provided that any of said property could be sold at any time on the agreement of the said Barnette and wife and said receivers, and he admits that certain property covered by said transfer has been sold by the receiver and said Barnette and wife under [154] and by virtue of the terms of said agreement and that the money realized from said sale has been delivered to said receiver. Plaintiff alleges that said money so received *amount* to \$2500.00 which he is holding subject to the terms and conditions of said trust deed.

He admits that the property conveyed by the said Barnette and wife in said Fairbanks Precinct consists of improved and income producing properties, the last of which is situate in the business section of Fairbanks, Alaska, and he alleges that the rentals therefrom aggregate approximately \$450.00 per month at this time.

He admits that the said trust deed has been partially executed to the extent above set forth, but as to what the attitude of the said Barnette will be in the matter of the indebtedness of said corporation in

the event sufficient money has not been realized on the assets of said corporation before November 18th, 1914, to pay all of the indebtedness of said corporation, or what his attitude will be in the matter of a sale of said property or so much thereof as may be necessary in satisfaction of all outstanding indebtedness and liabilities of said bank together with interest thereon as alleged, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that at the time of the execution and delivery of said trust deeds there was other indebtedness of said bank than the indebtedness due to depositors and holders of unpaid drafts, among which was the claim of Dexter Horton National Bank for a sum in excess of \$120,000.00 as alleged, to secure which, the said Dexter Horton National Bank claimed a lien upon the stock of the Gold Bar Lumber Company belonging to said bank and which was then in the possession of the said Dexter Horton National Bank; but as to whether or not said stock was recognized by the then receivers and the attorneys for said receivers and the Court, as being of a value greater than sufficient to pay said claim [155] of said Dexter Horton National Bank, and that if said stock was sold under foreclosure of the pledge claimed thereon it would pay the indebtedness of the said Dexter Horton National Bank, and for that reason no reference to indebtedness was made in said trust deeds other than the indebtedness due to depositors and holders of unpaid drafts, this plaintiff has neither knowledge nor information

sufficient to form a belief.

He alleges that since said time the said Dexter Horton National Bank has instituted a suit for the foreclosure of the pledge claimed by it on said stock and has recovered a judgment establishing said lien and ordering sale of said stock in satisfaction of the same; that said sale under said judgment has been had and said stock bid in thereat by said Dexter Horton National Bank for \$100,000.00, and unless the same is reversed or set aside on appeal said judgment and sale will become final.

As to whether or not the former receivers, after the delivery of said trust deeds, abandoned all idea of instituting a suit against said Barnette or any other director of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief. He admits that no suit was instituted by them, as stated, and that no suit was instituted against said directors until after the appointment of the present receiver, this plaintiff. He alleges that in the institution and prosecution of this suit he is acting under order of Court; he admits that the said Barnette was not joined as a part defendant in this action, and he alleges that the reason therefor is that the acceptance of said trust deeds operated as an agreement not to sue said Barnette prior to November 18th, 1914.

He admits that since the institution of this suit the said Barnette has been within the jurisdiction of this Court as stated and could have been served with process, but he alleges that he was not served in this suit for the reason that he was not a party thereto. [156]

Third.

For reply to the second separate affirmative answer of the above named defendants, plaintiff prays that he denies each and every statement and allegation therein contained, except as hereinafter admitted.

He admits that during the whole time said defendants were directors of said bank, the said E. T. Barnette was likewise a director and was President of said bank;

He admits that subsequent to the closing of said bank and prior to the institution of this action the said E. T. Barnette and Isabelle Barnette, his wife, executed and delivered to the receivers of said bank a deed to *a* certain income producing properties situate in the town of Fairbanks, Alaska, and that said receivers have received certain moneys from the sale of certain of said properties in the town of Fairbanks, Alaska, which amount this plaintiff alleges to be \$2,500.00.

Plaintiff further admits that said receivers since said date have received the rent from said properties but he alleges that the gross income thereof up to April 1st, 1914, does not exceed \$20,606, out of which he has paid up to April 1st, 1914, expense incident to the care of said properties, approximately, \$1,457.32.

This plaintiff further alleges that said deed of trust is in writing and expresses for itself the terms and conditions thereof, the uses and purposes for which it was executed and delivered, and the admissions, agreement and assumed obligations of the said

E. T. Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the expressed terms of said deed.

O. L. RIDER,

Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing reply; I have read said reply, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 22d day of April, 1914. [157]

[Seal]

L. D. BENNETT,

Notary Public in and for the Territory of Alaska.

My commission expires June 24, 1916.

Service of copy accepted this 22nd day of April, 1914.

McGOWAN & CLARK,

Attorney for Defendants.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson, et al., Defendants. Reply to amended answer of defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston.

Filed in the District Court, Territory of Alaska, 4th Div., Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [158]

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

BE IT REMEMBERED that on the 22d day of April, A. D. 1914, the above-entitled cause came on for trial before the Court without a jury upon the issues as joined between the plaintiff and *and* defendants, the Honorable F. E. FULLER, Judge of said Court, presiding; the plaintiff appearing in person and by his attorney, O. L. Rider; the defendants appearing in person and by their attorneys John L. McGinn, John A. Clark and A. R. Heilig, and thereupon the respective parties plaintiff and defendants, from day to day, introduced their testimony in support of said issues until the 6th day of May, 1914, when all parties rested and the introduction of said testimony was closed.

And thereupon the Court, after hearing the allegations, testimony and proofs of the respective parties, and the arguments of counsel, and being fully advised in the premises, does hereby make and file, as constituting its decision in said cause, the following Findings of Fact and Conclusions of Law.

I.

That the Washington-Alaska Bank, of which the plaintiff is receiver, was incorporated under the laws of the State of Nevada on the 21 day of January 1908, with the authorized capital stock of \$300,000.00 divided into 3,000 shares of the par value of \$100.00 each; that said bank was incorporated under the name of the Fairbanks Banking Company; and that subsequently, by amendment to its Articles

of Incorporation, said name was changed to Washington-Alaska Bank. [159]

II.

That said bank commenced business in the town of Fairbanks, Alaska, on the 16 day of March, 1908, with a subscribed capital of \$206,000.00, part of which was paid for in cash, part in property, and the balance by the promissory notes of the subscribers.

III.

That prior to the 21 day of January, 1908, subscriptions for said capital stock were circulated, and the following persons, among others, subscribed for shares thereof, to wit: E. T. Barnette, 440 shares, R. C. Wood, 220 shares, James W. Hill, 220 shares; the name of R. C. Wood being subscribed thereto by said E. T. Barnette.

IV.

That prior to the incorporation of said bank, the said Barnette, Hill and Wood as copartners were conducting a banking business in said town of Fairbanks under the firm name and style of Fairbanks Banking Company, which said company in December, 1907, owing to financial difficulties, was unable to meet its obligations and was compelled to suspend business and close its doors, and was, at the time of the organization of said corporation, in the hands of trustees.

V.

That said corporation was organized, among other things, for the purpose of taking over the business and affairs of said partnership and assuming its outstanding obligations.

VI.

That the capital of said partnership was \$200,000.00 which belonged to said Barnette, and the agreement existing between said partners was that the profits of said partnership were to be divided, one-half to said Barnette, and one-fourth each to said Hill and Wood.

VII.

That thereafter, and in the fore part of January, 1908, a large number of business, professional and mining men of the Fairbanks Recording District, Alaska, met in the Town of Fairbanks, [160] Alaska, for the purpose of organizing a corporation to purchase and take over and absorb the business of the Fairbanks Banking Company, a partnership, and at said meeting negotiations were begun by said proposed incorporators with said copartnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets.

VIII.

That said committee met on the 5th day of January, 1908, and, after investigating the affairs of the bank, made the following report to be presented for the consideration of the proposed new corporation.

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that

notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its liabilities was placed, be accepted. [161]

(e) That all notes, properties and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount

not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30, and December 31.

IX.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read, and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of [162] the records of said meeting.

X.

That at said meeting a subscription list, a copy of which is set forth in paragraph 3 of the amended

complaint in this cause, was presented and signed by said proposed incorporators, setting forth the amount for which each respectively subscribed.

XI.

That at said meeting it was also agreed on behalf of the Fairbanks Banking Company, a copartnership, that said partnership would turn over to said corporation the property of said Fairbanks Banking Company, a partnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabilities of said partnership.

XII.

That said Fairbanks Banking Company, a corporation became such on the 21st day of January, 1908. That on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining notes of the subscribers for the stock subscribed by them, and, at said meeting, said stock notes were subscribed by said subscribers of stock and delivered to said corporation.

That at the time of said meeting the Articles of Incorporation of said Fairbanks Banking Company had not been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the Articles of Incorporation, when a

formal meeting would be held and proper by-laws be adopted. [163]

XIII.

That said Articles of Incorporation did not arrive in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect that the matter of taking over the property of the Fairbanks Banking Company, a partnership, be left to the board of directors.

That on the 12th day of March, 1908, at said meeting of the subscribers to said capital stock, said subscriptions were accepted by them and the above named Barnette, Hill and Wood, together with the other subscribers, were declared to be stockholders of the said corporation. The defendant Wood was not present at said meeting, but he was notified of the result of the same by the defendant Hill.

XIV.

Subsequently, at a meeting of the stockholders of said corporation it was resolved that the matter of taking over the business and affairs of said partnership be left to the board of directors. Thereafter, on March 12, 1908, at a meeting of the board of directors, said matter was considered by them and the resolutions of the proposed stockholders, set out in Finding VIII hereof, were by said directors adopted and approved, except that the resolution providing for the payment of accrued interest up to

February 15, 1908, was by them amended so as to read "March 15, 1908." At the same meeting it was ordered by said board of directors that stock issue to said Barnette, Hill and Wood in exchange for the property received from them by said corporation as follows: Barnette 440 shares; Hill 220 shares; Wood 220 shares.

XV.

That on the 16th day of March, 1908, a written agreement was entered into between said corporation and said partners, and on the [164] same day the same was signed by the said Barnette and Hill, and also on behalf of said bank by its president and secretary, wherein the valuation of the resources of said partnership was fixed at \$790,940.31 and its liabilities at \$538,940.31, leaving an excess of \$252,000.00 belonging to the said Barnette, Hill and Wood, in which said agreement the said Barnette, Hill and Wood agreed to accept stock of the corporation at its par value for the amount of assets in excess of said liabilities, except that \$200,000 thereof should be placed to the credit of the said Barnette as a special deposit with said corporation upon the terms therein stated. By the terms of said agreement the amount of stock to be issued to Barnette, Hill and Wood was fixed at \$52,000.00 instead of \$88,000.00 as contemplated by said resolution and subscription, thus entitling Barnette to 260 shares and Wood and Hill each to 130 shares, a copy of said agreement is annexed to plaintiff's complaint and marked Exhibit One.

XVI.

That at the time said agreement was entered into, the said Barnette was president of the said corporation and also a member of the board of directors, the said Hill was a member of its executive committee and also its vice-president, and the said Wood was its cashier, and the said defendant John A. Jesson was a member of its board of directors. That the above-named Wood, Hill and Jesson are all of the officers of the said bank at the time said agreement was entered into upon whom service has been made in this case, and who are now before the Court as defendants.

XVII.

That the matter of preparing the papers for the transfer of said property belonging to said partnership to said corporation was, by the board of directors, left to the executive committee, and the said executive committee examined the affairs of said partnership, and, under their direction, said written agreement was prepared and afterwards submitted to the board of directors [165] for approval, and by them approved.

XVIII.

That according to the by-laws of said corporation, the said executive committee had the same powers as the board of directors, subject to approval of their acts by said board of directors.

XIX.

That at the time said written agreement was signed and executed, and during all of the negotiations leading up to the making of the same, the defendant

Wood was in Seattle, Washington, but he was advised fully concerning the same by the defendant Hill by letter and by telegram.

XX.

That prior to the return of said Wood to Fairbanks, to wit: on the 29th day of February, 1908, he offered to sell his stock in said corporation and to take in payment therefor part cash and a note for the balance, to be secured by said stock as collateral security.

XXI.

That the defendant Wood returned to Fairbanks some time in the month of April, 1908, and, upon his return, he signed said written agreement so entered into as aforesaid, knowing that the same contained said clause requiring him to take stock for his shares of the assets of said partnership so transferred to said *to said* corporation in excess of the liabilities thereof as aforesaid, and also knowing that the same did not provide for the payment of said accrued interest.

XXII.

That of loans and discounts transferred by said partnership to said corporation a large amount were then past due, or which then past due paper the sum of \$69,908.94 now remains in the hands of the receiver unpaid and uncollectable, which said loans and discounts were accepted by the directors of said corporation at their face value, and the same were included in those on which the accrued interest referred to in said resolution was afterward computed
[166]

XXIII.

That of said notes so past due as aforesaid, there were two executed by the Tanana Electric Company in the sum of \$27,997.38 which depended for their value upon the existence of an alleged guaranty of the Scandinavian-American Bank to make advancements sufficient to cover the same; that said alleged guaranty never had any existence in fact, and the claim therefor had been repudiated by said Scandinavian-American Bank prior to the time said note was accepted by said board of directors, and said repudiation was known to the members of said board. That said notes are still unpaid, and the same was at all times carried on the books of the said Washington-Alaska Bank, formerly Fairbanks Banking Company, as an asset in the sum of \$27,997.38.

XXIV.

That said board of directors and the officers of said bank accepted said notes of the Tanana Electric Company and paid therefor the sum of \$27,997.38 with knowledge on the part of each of them that the same depended for their value upon said alleged guaranty alone.

XXV.

That among the other assets of said partnership so accepted by said officers and directors was four-fifths of the capital stock of the Gold Bar Lumber Company, a corporation existing in the State of Washington, which said stock was accepted and paid for at the valuation of \$341,949.00, and said stock was at all times during the existence of said corporation carried as an asset in said sum.

XXVI.

That at the first meeting of the board of directors, held on the 12th day of March, 1908, the defendant Wood was elected cashier of said bank, at which time he was then in the said City of Seattle, Washington, as aforesaid, immediate notice was given to him of said election.

XXVII.

That the said Wood accepted said office of cashier while in [167] the said City of Seattle, and, the *the* 16th day of March, 1908, entered upon the discharge of his duties as such cashier, and, upon his return to said Fairbanks in April, 1908, as aforesaid, entered actively upon such duties and continued to so act until June 29, 1908, when he tendered his resignation as such cashier, and the same was accepted by the board of directors to be effective at the close of business in June 30, 1908, and one B. R. Dusenbury, who was then assistant cashier, was elected to succeed Wood as cashier.

XXVIII.

That at the time said Wood tendered his resignation as cashier as aforesaid, he demanded that there be paid to him the amount of his interest in said partnership assets, to wit, \$13,000.

XXIX.

That a certificate for 130 shares of the capital stock of said corporation had been written up in the name of the defendant Wood, of the par value of \$13,000, but that the same was never detached from the stock-book. That said 130 shares were carried on the books of said bank as outstanding stock from March

16, 1908, to June 30, 1908.

XXX.

That on the 30th day of June, 1908, with the knowledge, consent and approval of the officers and directors of said bank, a certificate of deposit was issued to and accepted by the said Wood in the sum of \$13,000, in lieu of said stock, which said certificate was signed by the said B. R. Dusenbury as assistant cashier prior to when the said resignation of the said Wood as cashier became effective, and said shares of capital stock were on the same day charged to treasury stock on the books of said bank.

XXXI.

That subsequently the said Wood drew out in cash from the funds of said bank the amount of the said certificate of deposit, to wit, \$13,000. [168]

XXXII.

That at the time the said certificate of deposit was issued to said Wood there was in effect a resolution of the said board of directors requiring monthly statements, showing the condition of said bank, to be presented to said board of directors; and that, in accordance with said resolution, there was, during the existence of said bank, presented to said board of directors at each monthly meeting thereafter a statement showing the condition of said bank, and said statements were examined in detail by said board and by them ordered filed.

XXXIII.

That there was submitted to said board of directors at its meeting on July 13, 1908, a written report in detail showing the condition of the affairs of said

bank, which said report was examined in detail and was ordered filed, and, under the question of this report, the question of refunding to those desirous of giving up their stock in the Fairbanks Banking Company was discussed, and it was the sense of the meeting that any stockholder desirous of giving up the stock, be paid for the same, and the stock returned to the treasury of said bank.

XXXIV. .

That at the time the said certificate of deposit was issued to said Wood, and his shares of stock so charged to treasury stock as aforesaid, the following of the defendants now before the court in this action were among its officers, to wit, James W. Hill, a member of the executive committee and its vice-president, John A. Jesson, a member of the board of directors, R. C. Wood, cashier and a member of its executive committee; and, at said meeting of July 13, 1908, at the time said report was submitted and the sense of said meeting was expressed as aforesaid, the said John A. Jesson was present and participated therein as a member of the board of directors, and the said James W. Hill was also present as its vice-president and a member of the executive committee. [169]

XXXV.

That of the notes accepted from said partnership as aforesaid and paid for by said corporation, there were charged on December 31, 1907, by said partnership on the books of said partnership to an account known as "doubtful account" the sum of \$22,979.99 and said doubtful account, so including said

notes in said amount, was then depreciated on the said books to the amount of thirty-three and one-third per cent thereof, which said notes were accepted by said corporation and paid for by them in the amount aforesaid, to wit, \$22,979.99, all of which said notes were then past due, and of which there still remains unpaid and uncollectible the sum of \$12,860.61. That of said notes so charged to said doubtful account as aforesaid, there was on December 31, 1909, charged by said corporation to the account of profit and loss on the books of said corporation the sum of \$12,192.80.

XXXVI.

That on March 23, 1908, pursuant to said resolution of the said board of directors adopted on March 12, 1908, the accrued interest on said loans so transferred to said corporation was computed to March 15, 1908, in the sum of \$39,642.81, and one-half thereof was placed to the credit of said Barnette, and one-fourth thereof each to the credit of said Hill and Wood on the books of said corporation, and subsequently the same was paid to said Barnette, Hill and Wood in cash.

XXXVII.

That of said interest so paid to said Barnette, Hill and Wood as aforesaid, approximately \$7,500.00 thereof was never collected by said bank.

XXXVIII.

That at the time said resolution allowing said interest was adopted, and at the time the amount thereof as aforesaid was placed to the credit of said Barnette, Hill and Wood as aforesaid on the books

of the said bank, the following defendants now before the Court in this action were officers of said bank, to wit, John A. Jesson, member of the board of directors, James W. Hill, [170] member of the executive committee and vice-president, and R. C. Wood, cashier.

XXXIX.

That at the time said corporation commenced business on March 16, 1908, it had a total subscribed and outstanding capital stock in the sum of \$206,000.00, only a small portion of which was paid for in cash, and at *not* time did the same exceed said amount; and that of its funds \$341,949.00 was at all times invested in stock of the Gold Bar Lumber Company, being \$135,949 in excess of its subscribed and outstanding stock.

XL.

That at the time said investment was so made as aforesaid, said Lumber Company was closed down and immediately prior to closing down, it had been operated at a loss, that in so far as said lumber company was able to operate since the purchase of said stock by said corporation, all of its earnings and a part of its surplus have been expended in the purchase and repair of equipment for said mill, and in the operation of said mill its standing timber was being consumed and its best asset exhausted. That no dividends have *been* ever been paid on the capital stock of said lumber company during the time the same was owned by said bank.

XLI.

That the Articles of Incorporation of said corpora-

tion authorized and empowered said corporation, among other things, to buy and sell gold and silver bullion, foreign coin, stocks, bonds, and all other property, real and personal, and to do any business and exercise any powers incident to the banking business, or necessary or proper to the furtherance and attainment of the purposes of said bank.

XLII.

That subdivisions 5 and 6 of Articles XII of the by-laws of said corporation, adopted at the stockholders meeting held March 12, 1908, provided that all issued and outstanding stock of the company that may be donated to, or purchased by, the company, or [171] which shall revert by reason of failure to pay for the same, shall be treasury stock, and shall be held subject to the disposal of the action of the board of directors. Said stock shall neither vote nor participate in dividends while held by the company. The board of directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same provided said board of directors shall offer to pay to said stockholder the same amount as he might obtain from any other person.

XLIII.

That on the 14th day of September, 1908, the executive committee of the said Fairbanks Banking Company, consisting of Barnette, president, Hill, vice-president, Dusenbury, cashier, and directors Jonas, John Jesson and Ryan, passed a resolution to the effect that said corporation would not take over any more stock of the stockholders, which said

resolution of the executive committee was approved and ratified by the board of directors on October 14, 1908, the directors present at said meeting being: Hill, Peoples, Yarnell, Robinson, Ryan, Jonas, and Jesson, and also the said Dusenbury was present.

XLIV.

That after said bank took said stock of said Wood into its treasury, frequent and continuous surrenders of its stock were made by its stockholders, amounting in all to thirty-eight different and distinct transactions, aggregation a total of \$43,000 exclusive of said Wood's stock. That the stock so taken back by the corporation was charged to the treasury stock account, and of the same only ten shares of the par value of \$1,000 were ever reissued. That said stock surrenders continued down to and including October 25, 1910, when the last surrender was made, being the McGinn stock of the par value of \$10,000, for which the sum of \$6,000 in cash was paid by the bank to said McGinn. [172]

XLV.

That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares.

That said stock was taken in part payment of a loan that the bank had theretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of \$4,000 in cash, which

fully paid said loan. That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the board of directors. That said directors believed at said time that said loan was precarious; and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and believing it to be for the best interests of the corporation.

XLVI.

That on the 3d day of February, 1909, at a meeting of the executive committee of said bank, it was again resolved that the officers of said bank be directed to say that "the corporation did not desire to buy in its stock at present," which said resolution of the said executive committee was thereafter and on, to wit, the 13th day of February, 1909, approved and ratified by the said board of directors.

XLVII.

That on the 15th day of March, 1909, H. B. Parkin, who was the owner of 10 shares of the outstanding capital stock of said bank, and Oscar Tackstrom, who was the owner of 5 shares of the said outstanding capital stock, requested the executive committee of said bank to buy their stock.

That said executive committee thereupon again announced its policy, by resolving "It was the sense of the meeting that the bank observed the rule established at a previous meeting of the [173] board wherein it was declared not to buy in any more stock," which said resolution was approved and ratified by the board of directors, at said meeting held, April 12, 1909, at which meeting of the directors the

following officers and directors were present: Barnette, Claypool, Hill, Jesson, Robinson, Yarnell, Brumbaugh, Peoples, and Dusenbury.

XLVIII.

That John L. McGinn was a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and was the owner of 100 shares of the outstanding capital stock of said Washington-Alaska Bank, of the par value of \$10,000.

XLIX.

That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, demanded the right to inspect its books and papers, and threatened that unless this right was granted him immediately, to make application for an order permitting him to do so and for the appointment of a receiver of the said Washington-Alaska Bank. That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair public confidence in the Washington-Alaska Bank and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of \$6,000, but it would be necessary for him to

borrow money to complete said purchase; that, as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount [174] thereof and paid to said John L. McGinn the sum of \$6,000.00 for his 100 shares of capital stock. That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered the stock to the bank, and the stock was thereafter held, with other treasury stock of the company.

L.

That upon said 13th day of October, 1910, the director George Preston, by reason of sickness of his family, was quarantined and unable to attend the meeting of the board of directors held on said day, and was not present thereat, and know nothing of the action taken at the meeting of said board.

LI.

That when stock was so taken back by the corporation, the amount paid therefor was either paid in cash, or notes held by the bank were cancelled and surrendered to the stockholders.

That said bank had no surplus of undivided profits against which the same could be charged.

LII.

That the taking back of said stock and the payment therefor as aforesaid was illegal, wrongful, and in violation of the laws of the State of Nevada under which said corporation was organized.

LIII.

That after the surrender of the stock of the said Wood, to wit, from July 13, 1908, to and including September 12, 1908, stock was so taken up in the sum of \$13,400.00 during which time the defendant John A. Jesson was a member of the board of directors, and the defendant James W. Hill a member of its said executive committee;

That from September 13, 1908, to and including October 13, 1908, stock was so taken up in the sum of \$1500.00, during which time the defendants John A. Jesson and James W. Hill were members of the board of directors: [175]

That from October 14, 1908, to and including March 13, 1909, stock was so taken up in the sum of \$13,100.00, during which time the defendants Jesson, Hill and Peoples were members of the board of directors;

That from the 14 of March, 1909, to and including September 12, 1909, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh were members of the board of directors;

That from September 13, 1909, to and including October 12, 1909, stock was so taken up in the sum of \$3000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh and McGinn were members of the board of directors;

That from October 13, 1909, to and including January 18, 1910, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill, McGinn and Brumbaugh and Wood

were members of the board of directors;

That from January 19, 1910, to and including October 25, 1910, stock was so taken up in the sum of \$10,000, for which the said sum of \$6,000.00 was paid in cash, and at the time said stock was so taken up the defendants John A. Jesson, Brumbaugh, Clark, Healey and Preston were members of its board of directors.

LIV.

That said stock surrenders so made as aforesaid were acquiesced in by said directors, and in some instances were made under their directors and with their express approval.

LV.

That in the month of May, 1909, said Fairbanks Banking Company and the Washington-Alaska Bank of Washington, then doing business at Fairbanks, each purchased one-half of the capital stock of the First National Bank of Fairbanks, Alaska, for which each paid the sum of \$62,500.00, and continued to own and hold said stock until the month of May, 1910.

That on or about the 4th of May, 1910, said Fairbanks Banking [176] Company sold the entire capital stock of the said First National Bank to the defendants Wood and McGinn for the sum of \$125,000.00 and received said amount in payment therefor, delivering to them the said capital stock of said First National Bank.

That at the time said banks purchased said stock of the First National Bank, they gave to said Wood an option to purchase the same on or before June 1,

1910, for the sum of \$125,000.00, and said sale to said Wood and McGinn was made in pursuance to said option.

That neither the said Fairbanks Banking Company, nor the said Washington-Alaska Bank of Washington, received any dividend on said stock of the said First National Bank during the time the same was held and owned by them, nor did they, or either of them, receive any interest from the said Wood and McGinn, or from anyone in their behalf, for the money invested in said stock during the time the same was so invested.

LVI.

That on September 14, 1909, the said Fairbanks Banking Company purchased the entire capital stock of the said Washington-Alaska Bank of Washington, paying therefor the sum of \$250,000.00, which said capital stock at said time was of the par value of \$150,000.

LVII.

That at the time the said capital stock of said Washington-Alaska Bank of Washington was so purchased the defendants J. A. Jesson, James W. Hill and John L. McGinn were members of the board of directors of the Fairbanks Banking Company; and said purchase of said capital stock was ratified and confirmed by them as members of said board on the said 14 day of September, 1909.

LVIII.

That at the time the aforesaid resolution was adopted by the said board of directors to take over the business and affairs of said partnership; and at

the time said written agreement between said corporation and said partners was entered into and confirmed and approved; and at the time said valuation was placed on said [177] capital stock of the said Gold Bar Lumber Company and said stock accepted at such valuation; and at the time said past due notes held by said partners were accepted and paid for by said corporation, including said notes of the said Tanana Electric Company and said notes which had been charged to the doubtful account of said partnership as aforesaid; and at the time said accrued interest on said notes so purchased of said partnership was computed and allowed to said partners and placed to their credit as aforesaid on the books of said corporation, the following defendants now before the Court in this action were officers and directors of said corporation and acquiesced in said transactions and gave their consent thereto with full knowledge on the part of each of them of the existence of the facts heretofore found respecting said transactions, to wit: James W. Hill, vice-president and member of its executive committee; John A. Jesson, member of its board of directors; R. C. Wood, its cashier. That the said Hill and Wood were also members of the partnership with which said corporation contracted respecting said matters and were each personally interested therein adversely to said corporation.

LIX.

That at the time of the said sale of the said capital stock of the said First National Bank to the said Wood and McGinn, the following defendants now

before this Court were officers and directors of the said Fairbanks Banking Company, and each consented to said sale on the terms thereof heretofore stated, to wit: J. A. Jesson, R. C. Wood, John L. McGinn and Ray Brumbaugh.

LX.

That on the 12 day of April, 1910, the said Fairbanks Banking Company, by its board of directors, declared a dividend of twenty per cent on its then outstanding capital stock of \$168,600, which dividend amounted to \$33,720.00, and which said sum was paid to the stockholders of said bank either in cash or by crediting the amount thereof upon notes owing by said stockholders to said bank. [178]

LXI.

That at the time said dividend was so declared and paid, the said Fairbanks Banking Company did not have any surplus or undivided profits out of which the same could be declared and paid.

LXII.

That said dividend was declared and paid in violation of the laws of the State of Nevada, and also in violation of the by-laws of the said Fairbanks Banking Company, and was wrongful and illegal.

LXIII.

That at the time said dividend was declared and paid, the defendants Wood, McGinn, Brumbaugh and John A. Jesson were members of the board of directors of the said Fairbanks Banking Company, and gave their consent thereto.

LXIV.

That on the 1st day of October, 1910, the said

Fairbanks Banking Company and the said Washington-Alaska Bank of Washington combined, at which time the said Fairbanks Banking Company took over the assets of the said Washington-Alaska Bank of Washington and assumed and agreed to pay its outstanding liabilities; and thereafter the said Washington-Alaska Bank of Washington ceased to exist or do business as a bank, and the Fairbanks Banking Company, by amendment to its Articles of Incorporation, changed its name to Washington-Alaska Bank of Nevada, and continued thereafter to transact business under said name at said Fairbanks, Alaska, until the appointment of the receiver therefor.

LXV.

That pursuant to the agreement heretofore referred to between the said Fairbanks Banking Company and the said partnership formerly existing between the said Barnette, Hill and Wood, the said sum of \$200,000.00 to be paid to said Barnette was placed to his credit on the books of said corporation as a special deposit, and subsequently the entire sum thereof was paid to said Barnette in cash and drawn out by him from the funds of said bank. [179]

LXVI.

That the assets of the said bank now in the hands of the receiver are insufficient to pay its liabilities and the amount of such liabilities is more than \$470,000.00 in excess of the value of said assets.

Conclusions of Law.

Upon the foregoing findings of fact, the Court finds as conclusions of law:

1. That the defendants Wood, McGinn, Brumbaugh and Jesson are jointly and severally liable to the sum of \$33,720.00, by reason of the declaration and payment of the dividend upon the capital stock of the Fairbanks Banking Company on April 12, 1910;

2. That the defendant Jesson is liable in the sum of \$13,400.00, by reason of the surrender of shares of capital stock of said company, made between July 13, 1908, and September 12, 1908;

3. That the defendants Jesson and Hill are jointly and severally liable in the sum of \$1500.00, for surrender of shares of capital stock of said company, made between September 13, 1908, and October 13, 1908;

4. That the defendants Jesson, Hill and Peoples, are jointly and severally liable in the sum of \$1100.00, for surrenders of shares of capital stock, made between October 14, 1908, and March 13, 1909;

5. That the defendants Jesson, Hill and Brumbaugh are jointly and severally liable in the sum of \$1000.00, for surrenders of shares of capital stock of said company, made between March 14, 1909, and September 12, 1909;

6. That defendants Jesson, Brumbaugh and McGinn are jointly and severally liable in the sum of \$3000.00, for surrenders of capital stock of said company, made between September 13, 1909, and October 12, 1909;

7. That defendants Jesson, McGinn and Brumbaugh [180] are jointly and severally liable in the sum of \$1000.00, for surrenders of capital stock made

between October 13, 1909, and January 18, 1910.

8. That the plaintiff is entitled to a decree and judgment against the above-named defendants for the recovery of the sums above mentioned, and that as to the other defendants in this suit this action should be dismissed.

Dated June 11, 1914.

F. E. FULLER,

Entered in Court Journal No. 12, page 944.

District Judge.

[Endorsed]: No. 1756. In the District Court for the District of Alaska, Fourth Judicial Division. *F. G. Noyes, Receiver, vs. J. A. Jesson et al.* Findings of Fact and Conclusions of Law.

Filed in the District Court, Territory of Alaska, 4th Div. Jun. 11, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [181]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1756.

F. G. NOYES, Receiver of the Washington-Alaska
Bank, a Corporation,

Plaintiff,

vs.

J. A. JESSON et al.,

Defendants.

Decree.

BE IT REMEMBERED, that on the 22d day of April, A. D. 1914, the above-entitled cause came on

regularly for trial before the Court, without a jury, upon the issues as joined between the plaintiff and the defendants, J. A. Jesson, R. C. Wood, J. A. Healey, E. R. Peoples, John L. McGinn, Ray Brumbaugh, James W. Hill, John A. Clark, and George Preston. The Honorable F. E. Fuller, Judge of said court, presiding. The plaintiff appeared in person and by his attorney O. L. Rider, and the said defendants R. C. Wood, James W. Hill, E. R. Peoples, and John L. McGinn appearing by their attorneys A. R. Heilig and John L. McGinn, and the defendants J. A. Jesson, Ray Brumbaugh, J. A. Healey, John A. Clark, George Preston and E. R. Peoples appearing by their attorneys McGowan & Clark, and thereupon the respective parties, plaintiff and defendants, from day to day introduced their testimony in support of said issues until the 6th day of May, 1914, when all of said parties rested and introduction of said testimony was closed, and thereupon the Court, after hearing the arguments of counsel and after considering the pleadings and the testimony, and being fully advised in the premises, did, on the 11th day of June, 1914, make and file its findings of fact and conclusions of law upon said issues; and now, to wit, on this 15th day of June, 1914, the Court being fully advised in the premises, it is ordered, adjudged and decreed as follows, to wit:

1.

That the plaintiff have and recover of and from the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and [182] severally the sum of \$33,720.00 by reason of the

declaration and payment on April 12th, 1910, of the dividend upon the capital stock of the Fairbanks Banking Company set up in the complaint;

II.

That the plaintiff have and recover of and from the defendant J. A. Jesson the further sum of \$13,400.00 by reason of the surrender of shares of the capital stock of said company made between July 13, 1908, and September 12, 1908;

III.

That the plaintiff have and recover of and from the defendants J. A. Jesson and James W. Hill, jointly and severally the further sum of \$1,500.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1908, and October 13, 1908;

IV.

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and E. R. Peoples, jointly and severally, the further sum of \$1,100.00 by reason of the surrender of shares of the capital stock of said company made between October 14, 1908, and March 13, 1909;

V.

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between March 14, 1909, and September 12, 1909;

VI.

That the plaintiff have and recover of and from

the defendants, J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, the further sum of \$3,000.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1909, and October 12, 1909; [183]

VII.

That the plaintiff have and recover of and from the defendants J. A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between October 13, 1909, and January 18, 1910.

VIII.

That the plaintiff take nothing as against the defendants J. A. Healey, John A. Clark and George Preston by reason of any of the matters and things set forth in the complaint herein and that this action be and the same is hereby dismissed as to said J. A. Healey, John A. Clark and George Preston.

IX.

That the plaintiff take nothing, further than as above specified, against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill, by reason of any of the matters and things set forth in the complaint herein, and that this action be and the same is hereby dismissed as to them in respect to all matters and things set up in the complaint herein, except as to the declaration and payment of said dividend and the surrenders of the shares of the capital stock of said company as above specified:

All of which is now finally ORDERED, AD-

JUDGED AND DECREED at the cost of the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Let execution issue for the enforcement of above judgment and decree against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Dated Fairbanks, Alaska, this 15th day of June, 1914.

F. E. FULLER,

Judge of the District Court, Territory of Alaska,
Fourth Division.

Entered in Court Journal No. 12, page 958. [184]

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Decree. Service of Copy Accepted this 15th day of June, 1914. McGowan & Clark, John L. McGinn, A. R. Heilig, Attorneys for Defendants. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [185]

[Title of Court and Cause.]

Bill of Exceptions.

BE IT REMEMBERED that this action came on regularly for trial before the Court sitting without a jury, Honorable Frederick E. Fuller, Judge, presiding, at 10 o'clock A. M. on April 22, 1914, when O. L. Rider Esq. appeared as attorney for plaintiff, and

A. R. Heilig Esq, for defendant E. R. Peoples, John L. McGinn Esq for defendants R. C. Wood, James W. Hill, J. A. Jesson, John L. McGinn and Raymond Brumbaugh, and John A. Clark Esq for defendants J. A. Jesson, Raymond Brumbaugh, George Preston and John A. Clark, and the following proceedings were had and testimony was taken:—

[Testimony of Sidney Stewart, for Plaintiff.]

SIDNEY STEWART, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. RIDER.)

Q. You may state your name.

A. Sidney Stewart.

Q. Where do you live? A. Fairbanks, Alaska.

Q. What is your occupation?

A. Clerk for receiver of Washington-Alaska Bank.

Q. How long have you been engaged as clerk for the receiver of the Washington-Alaska Bank?

[186] A. Since May 12, 1911.

Q. As clerk for the receiver, have you access to the books, records and files in the possession of the receiver? A. Yes, sir.

Q. Have you had experience, Mr. Stewart, as a bookkeeper? A. Yes, sir.

Q. What experience have you had as a bookkeeper?

Mr. McGINN.—We admit that he is a good, competent bookkeeper. [187]

Q. (Mr. STEWART.) I present you two pack-

(Testimony of Sidney Stewart.)

ages which are labeled "Nos. 311 and 312," and I ask you if you can identify them as a portion of the records and files of the receiver?

A. I can, yes, sir.

Mr. RIDER.—I wish to offer in evidence from the record found in file number 311 of the meeting of the board of directors had on the 12th day of March, 1908 at 10 o'clock P. M. the following (reads):

1. "The first meeting of the board of directors of the Fairbanks Banking Company was held at the office of McGinn & Sullivan in the town of Fairbanks, Territory of Alaska, on the 12th day of March, 1908, at ten o'clock P. M. immediately after adjournment of the stockholders meeting.

2. Present: E. T. Barnette, C. J. Robinson, D. H. Jonas, John P. Anderson, J. A. Jesson, M. H. McMullen, Chas. E. Claypool, Dan Ryan, Hans Stark, Dave Yarnell, John Flygar.

3. Each of the directors present took the oath of office and subscribed the written oath in the form presented at the meeting in conformity with the laws of the State of Nevada, and thereupon entered upon the discharge of their duties; which oath so signed by said board of directors was ordered filed.

4. Mr. E. T. Barnette was chosen temporary chairman and Mr. B. R. Dusenbury was chosen temporary secretary of the meeting.

5. The following gentlemen were unanimously elected officers of the company to serve until their successors are elected and qualified:

E. T. Barnette, President.

(Testimony of Sidney Stewart.)

J. W. Hill, First Vice-President.

R. C. Wood, Cashier. [188]

B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer.

10. The adjourned meeting of the board of directors was held at the office of McGinn & Sullivan on the 13th day of March, 1908 at the hour of ten o'clock A. M. pursuant to adjournment of the previous night. All the directors were present except Robert Shepard. The meeting was called to order by the chairman.

11. It was then moved and seconded that an executive committee of three directors be elected. Messrs. Jonas, Stark and Claypool were unanimously elected members of the executive committee to act in conjunction with the president and first vice-president with all the powers given in the by-laws of the corporation. Carried.

12. It was then moved and seconded that the salaries of the various officers and employees of the corporation be now fixed for the ensuing six months. Carried.

13. It was moved by Mr. Jonas, seconded by Mr. Jesson that the salary of the president be \$500.00 per month. Carried. It was moved by Mr. Jonas, seconded by Mr. Robinson that the salary of the first vice-president and cashier be \$400.00 per month. Carried.

18. It was moved by Mr. Jonas, seconded by Mr. Robinson that the retainer of McGinn & Sullivan, attorneys be fixed at \$250.00 per month, and that said

(Testimony of Sidney Stewart.)

McGinn & Sullivan be permitted to charge a minimum fee of \$10.00 upon all mortgages, deeds of conveyance, bills of sales and other like instruments prepared by them; and that they be allowed compensation for typewriting for all other papers not included in the above list. Carried.

21. A general discussion was then had in regard to the value of the Gold Bar property situated in the State of Washington, and upon motion duly made and seconded it was: [189]

Resolved, that the board of directors obtain from Dexter Horton Company of Seattle, Washington, an estimate of the total value of the Gold Bar property. Carried.

22. It was moved by Mr. Robinson, seconded by Mr. Stark that the board of directors ratify the arrangement as to the taking over of the assets, property, business and liabilities of the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, J. W. Hill and R. C. Wood upon the terms and conditions as are set forth in the minutes of the meeting of the subscribers held January 5th, 1908, and which is as follows:

“That the notes, properties and securities of the Fairbanks Banking Company, the old institution, examined by the present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted; and

That all notes, properties and securities which said board of trustees placed in the number 3, or doubtful,

(Testimony of Sidney Stewart.)

class remain the property of the old institution; and

That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that same be payable on or before December 31, 1908; and

That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the now corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908; and

That the proposition of Captain E. T. Barnette to leave on deposit with the new institution the sum of \$200,000.00 without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the court in the Causten vs Barnette suit in so far as such decision may decrease the value of the Gold Bar property as accepted by the present board of trustees.'

And that the executive committee be empowered to see that all papers and transfers be made properly by the officials of the old Fairbanks Banking Company and such [190] transaction legally carried out. Which motion being duly put the same was unanimously carried.

24. It was also moved and seconded that the following paragraph contained in the minutes of January 5th, 1908 of the proposed incorporators, to wit:

'that all interest on existing loans as December 12, 1907 be computed to February 15, 1908, and

(Testimony of Sidney Stewart.)

that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation and that same be payable on or before December 31, 1908'

be changed so that the words 'February 15' be made to read 'March 15.' Carried.

25. It was moved by Mr. Robinson, seconded by Mr. Yarnell that the president and secretary be instructed to issue stock to E. T. Barnette, James W. Hill and R. C. Wood in exchange for the property received by the Fairbanks Banking Company, a corporation as follows:

440 shares to E. T. Barnette

220 shares to James W. Hill

220 shares to R. C. Wood

and that said stock be deemed fully paid in exchange for property received from said persons. Said stock being issued for the assets of the corporation upon which a valuation has been placed at \$288,000.00 in excess of its total liabilities, less \$200,000 the capital stock of the old bank, the personal property of E. T. Barnette. Carried.

26. It was moved by Mr. Jonas, seconded by Claypool that the secretary be instructed to insert in the minute book of the corporation the minutes of the proposed stockholders of the Fairbanks Banking Company of meetings held January 5th, 1908, meeting held January 6th, 1908, and of the meeting of the so-called board of directors held Feby 8, 1908, for future reference and preservation. [191] Carried.

(Testimony of Sidney Stewart.)

MINUTES OF COMMITTEE MEETING.

Fairbanks, Alaska, January 5, 1908.

A meeting of the committee consisting of Mr. John Jesson, Mr. D. H. Jonas and Mr. C. E. Claypool, elected by ballot at a meeting of nineteen representative business, professional and mining men, was held at the hour of 10 A. M. at the office of the Fairbanks Banking Company, Fairbanks, Alaska, Captain E. T. Barnette and James W. Hill, President and Vice-President, respectively, of the Fairbanks Banking Co. were present.

B. R. Dusenbury was chosen to act as secretary of the meeting.

The object of the meeting was to go into the details of the reorganization of the Fairbanks Banking Company and of the taking over of the business of the said institution by the proposed new corporation.

The following particulars and recommendations were prepared for consideration at an adjourned meeting of the aforementioned business, professional and mining men to be held at the offices of McGinn & Sullivan, Fairbanks, Alaska, at 8 P. M. Monday, January 6th, 1908.

That the issue of stock for the proposed new corporation be as of date February 15, 1908, that notes be taken for all deferred payments, that same bear interest at the rate of one per cent per month from February 15, 1908, until paid, that 25% of the unpaid for stock be due and payable on or before June 1, 1908, that the balance be due and payable on or before July 1, 1908; and

(Testimony of Sidney Stewart.)

That Captain E. T. Barnette and James W. Hill with such associates as they may require prepare a subscription list; and

That the amount subscribed by any person be left to that person and in case of over subscription should be reduced proportionately; and

That the notes, properties and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted; and

That all notes, properties and securities which said board of trustees placed in the number 3, or doubtful, class remain and be the property of the old institution; and

That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation and that same be payable on or before December 31, 1908; and [192]

That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908; and

That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of \$200,000. without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Causten vs. Barnette suit

(Testimony of Sidney Stewart.)

in so far as such decision may decrease the value of the Gold Bar property as accepted by the present board of trustees; and

That the officers of the new corporation be president, vice-president, 2d vice-president, cashier and assistant cashier, treasurer and secretary; and

That the number of the board of directors be 12; that 4 be elected 6 months, 4 for 12 months, and 4 for 18 months, or until their respective successors are duly elected and qualified; and

That dividends be declared semi-annually on June 30 and December 31.

B. R. DUSENBURY,
Secy.

Fairbanks, Alaska, January 6th, 1908.

An adjourned meeting of representative business, professional and mining men was held at the office of McGinn & Sullivan, Fairbanks, Alaska, at 8:30 P. M. for the purpose of receiving the report of a committee appointed at a previous meeting and for the purpose of discussing further plans for the reorganization of the Fairbanks Banking Company.

The committee consisted of Jonas, Jesson and Claypool.

The report of the committee was read to the meeting by B. R. Dusenbury. It was re-read and passed on section by section as read.

On motion of Claypool, seconded by Robinson, the report of the committee was adopted and ordered kept as a part of the records of the meeting. Motion carried.

(Testimony of Sidney Stewart.)

B. R. Dusenbury was chosen secretary of the meeting.

The preamble to the subscription list was read to the meeting by Mr. John L. McGinn.

Prior to the signing of same by any one the following motion prevailed: Moved Jonas, second Claypool, that the subscription for stock in the proposed new corporation by Mr. John Jesson on behalf of his brothers L. N. Jesson, S. Jesson and E. R. Jesson, who are on the outside, be received, as per his request, subject to their approval on their arrival here. Motion carried. [193]

The following subscriptions were received:

E. T. Barnette.....	440	shares
R. C. Wood.....	220	“
J. W. Hill.....	220	“
S. Jesson.....	100	“
E. R. Jesson.....	100	“
J. A. Jesson.....	100	“
L. N. Jesson.....	100	“
John Flygar.....	20	“
J. C. Kellum.....	100	“
Dave Yarnell.....	100	“
H. Stark.....	100	“
D. Ryan.....	25	“
C. E. Claypool.....	50	“
D. H. Jonas.....	100	“
Chas. J. Robinson.....	50	“
B. R. Dusenbury.....	50	“
John L. McGinn.....	100	“

(Testimony of Sidney Stewart.)

Moved *Barrett*, second Robinson, that the name of Mr. Ryan be added to the Committee. Carried.

Moved by McGinn and duly seconded that the committee be continued.

It was the sense of the meeting that anyone subscribing for 10 shares *of* less of the stock of the proposed corporation, that in case of over-subscription that the number of shares be not cut down.

On motion the meeting adjourned.

B. R. DUSENBURY,
Secretary."

I wish next to read from the minutes of the subscribers' meeting; a meeting of the subscribers for stock of the Fairbanks Banking Company, incorporated, which is made a part of the minutes of the directors' meeting from which I am now reading, and the part I wish to read is as follows (reads):

It was moved by Charles E. Claypool seconded by L. T. Erwin that the meeting proceed to the election of a board of 12 directors. Carried.

Capt. Barnette stated that he had given the matter of the board of directors considerable thought and desired to name a list of 12 stockholders who he thought would make a strong representative board. He stated further that the stockholders were, of course, at perfect liberty to name others for the consideration of the meeting. The list submitted was as follows:

Dave Yarnell, J. A. Jesson, M. H. McMullen, John P. Anderson, D. H. Jonas, Dan Ryan, Chas. J. Robinson, W. G. Cassels, John Flygar, Robt. Sheppard,

(Testimony of Sidney Stewart.)

Chas E. Claypool, E. T. Barnette. [194]

There being no other nominations, it was moved by McGinn, seconded by J. A. Jesson, the nominations closed. Motion carried.

It was moved by *Barrett*, seconded by L. T. Erwin that the secretary cast the ballot in favor of the above-named persons as directors. Carried.

The ballot being so cast, the 12 named persons were declared duly elected."

I read next from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held on February 8th, 1908, at 9:30 P M., and which are embodied in the minutes of the directors of March 12, as follows (reads):

"It was moved by D. H. Jonas, seconded by Robinson that the meeting proceed to the election of officers of the bank, except as to second vice-president. Carried. The following were unanimously elected as such officers: E. T. Barnette, President. James W. Hill, Vice-president, R. C. Wood, Cashier, B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer."

I wish now to read from the minutes of the incorporators' meeting of the Fairbanks Banking Company, found in the secretary's file, which has been referred to as File No. 312.

(Conference between attorneys, and they agree that the date "February" 12, 1908, as the date of said meeting, should be "March" 12, 1908, and that record be amended accordingly.)

I will first read paragraph 7 (reads):

(Testimony of Sidney Stewart.)

“7. The secretary presented a form of by-laws for the regulation of the affairs of the company which were read article by article and unanimously adopted and a copy thereof ordered spread upon the minutes.” The by-laws follow, but I will not read them. Paragraph 9 (reads):

“9. Mr. Hill then stated that prior to incorporation [195] for the purpose of determining the amount of capital stock that would be subscribed, and the name and numbers of the stockholders, that a subscription list had been circulated among the mine operators and merchants of the Fairbanks Recording District, Territory of Alaska, and moved that said subscription list containing the names of the intended stockholders of the Fairbanks Banking Company and the amount of stock subscribed by them, and also, as to the manner of payment of the same be spread upon the minutes of this meeting. Which motion was seconded by Mr. Dusenbury and an order made that said subscription list be spread upon the minutes, the same being as follows:”

I will not read the subscription list, because it has been copied in the pleadings, save this part: It closes as follows (reads):

“In witness whereof we have hereunto set our hands and seals this * * * day of January, 1908.

Name.

Number of Shares.

E. T. Barnette.....440 shares.”

Mr. McGINN.—We ask that the original subscription list be produced for the purpose of showing that

(Testimony of Sidney Stewart.)

Mr. Wood never signed it.

Mr. RIDER.—The original subscription list will be produced and you can examine it.

Mr. McGINN.—With that understanding we withdraw our objection.

Mr. RIDER.—(Continues reading.)

“E. T. Barnette..... 440 shares

R. C. Wood..... 220 shares

James W. Hill..... 220 shares.”

There are names of the other subscribers attached, but I will not read them. (Continues reading.)

“Thereupon Mr. Hill moved that said proposed offers of [196] subscription be accepted by the corporation, and said persons be declared stockholders of the Fairbanks Banking Company. Which said motion was duly seconded by Mr. Dusenbury, and upon being put to vote was unanimously carried, and the persons above named declared to be stockholders of said corporation to the amount of stock hereinbefore set opposite their respective names.

13. On motion duly made and seconded it was resolved that a board of directors as provided in the Articles of Incorporation be elected in three classes and until their successors are elected and qualified:

Messrs. David Yarnell, Dan Ryan, C. J. Robinson and M. H. McMullen were nominated for directors of the company to hold office for the ensuing six months.

Messrs. C. E. Claypool, Robert Shephard, Hans Stark and John Flygar were nominated for direc-

(Testimony of Sidney Stewart.)

tors of the company to hold office for the ensuing twelve months.

Messrs. J. A. Jesson, J. P. Anderson, D. H. Jonas and E. T. Barnette were nominated for directors of the company to hold office for the ensuing eighteen months.

No other nominations having been made the polls were duly open and ballot having been duly had and all the stockholders having voted, the polls were declared closed and the judges of election presented their certificate showing that the aforesaid gentlemen had been duly elected directors of the company.”

14. On motion duly made and seconded it was resolved that in compliance with the laws of Nevada, and the Certificate of Incorporation of the company, that the principal office of the company in the State of Nevada [197] be established and maintained at #116 North Carson Street in Carson City in the County of Ormsby.

15. On motion duly made and seconded it was resolved that the matter of the taking over the property of the Fairbanks Banking Company, the co-partnership consisting of E. T. Barnette, J. W. Hill and R. C. Wood be left to the board of directors. Carried.

I wish to read from the minutes of the executive committee held on April 22, 1908 (Reads):

“Minutes of meeting of the executive committee of the Fairbanks Banking Committee, Fairbanks, Alaska, April 22, 1908.

A special meeting of the executive committee of

(Testimony of Sidney Stewart.)

the Fairbanks Banking Company was held at the office of the company at 7 P. M.

James W. Hill, Vice-president presiding. B. R. Dusenbury, Secretary, present. Members present: Jonas, Claypool, Stark and Hill. The agreement, assignment and deeds relative to the proper transfer of the property of the Fairbanks Banking Company, a copartnership by them to the Fairbanks Banking Company, a corporation, was brought up for consideration. It was moved by Jonas, seconded by Claypool, that the assignment and agreement between James W. Hill, E. T. Barnette and R. C. Wood to and with the Fairbanks Banking Company, incorporated, and the deeds covering Fairbanks and Cleary City property, will be accepted as proper conveyances, and that the deeds be filed for record in the office of the recorder of the Fairbanks Recording District, Fairbanks, Alaska. Motion carried.

There being no further business, the meeting adjourned in due form. [198]

B. R. DUSENBURY,
Secretary.

Approved May 12, 1908.

B. R. DUSENBURY,
Secretary."

I wish to read from the minutes of the meeting of the board of directors held on May 12, 1908, the following (Reads):

"Minutes of the meeting of the board of directors of the Fairbanks Banking Company, Fairbanks, Alaska, May 12, 1908.

(Testimony of Sidney Stewart.)

The regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 P. M. E. T. Barnette, President presiding. B. R. Dusenbury, Secretary, present. Members present: Yarnell, Ryan, Anderson, Jesson, Barnette, Claypool. James W. Hill, Vice-president, was present.

The minutes of meetings of the executive committee held on the following dates were read and discussed as read, and on motion made and properly seconded were approved, ratified and passed as the action of the board: April 14, 16, 20, 22, 24, 27, 28 and May 12." [199]

Mr. RIDER.—Q. I will ask you, Mr. Stewart, if you know whether or not the contract between the partnership and the corporation is in the secretary's files—the original contract?

A. That is the agreement?

Q. Yes. A. Yes, sir.

Mr. RIDER.—I wish to offer in evidence the agreement dated March 16, 1908, between E. T. Barnette, James W. Hill and R. C. Wood, copartners doing business under the firm name and style of the Fairbanks Banking Company of Fairbanks, Alaska, as parties of the first part, and the Fairbanks Banking Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Nevada, as party of the second part.

Mr. McGINN.—To which we object on the ground that the evidence that has been introduced in this

(Testimony of Sidney Stewart.)

case shows that the matter of taking over the affairs of the old copartnership was left to the board of directors by the stockholders, with instructions that it should be taken over in accordance with the terms of the agreement that was entered into between the copartners and the subscribers at the meeting held January 5, 1908, and that this agreement does not state the true contract between the parties, in that it fails to reserve to E. T. Barnette, James W. Hill and R. C. Wood—the partnership—the accrued interest that is spoken of in the minutes, and also does not reserve the option to Mr. Hill and Mr. Wood to take money in lieu of stock.

Mr. RIDER.—I have read to you the minutes showing that the matter of these transfers was left to the executive committee.

The COURT.—Is it admitted by the pleadings that this is the agreement that was signed?

Mr. McGINN.—We admit that it is the agreement that was signed, but [200] we state that it is not the true agreement.

The COURT.—It may be admitted, subject to the objections.

Said agreement being the agreement attached to plaintiff's amended complaint marked exhibit "One" and herein marked exhibit "C." [201]

Mr. RIDER.—I now offer in evidence from the secretary's files, being file number 312, the original stock subscription, which is the same as that copied in the pleadings, and I call attention to the signatures thereto of E. T. Barnette, 440 shares, R. C.

(Testimony of Sidney Stewart.)

Wood 220 shares, and James W. Hill 220 shares.

Mr. McGINN.—We object to it on behalf of Mr. Wood because it is not his signature to this subscription list, and it is not binding upon Mr. Wood, and we deny that he signed this subscription list, in the pleadings.

The COURT.—The list may be received subject to the objection.

**[Power of Attorney, R. C. Wood to James W. Hill,
Dated September 21, 1906.]**

Thereupon plaintiff introduced in evidence the power of attorney from R. C. Wood to James W. Hill, which is in the words and figures as follows, and which is marked exhibit "A." [202]

**[Plaintiff's Exhibit "A"—Power of Attorney from
R. C. Wood to Jas. W. Hill.]**

No. 22623.

KNOW ALL MEN BY THESE PRESENTS,
That I, R. C. Wood, of Fairbanks, Alaska, have made, constituted and appointed, and by these presents do make, constitute and appoint, James W. Hill of the same place, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to ask, demand and sue for all moneys or debts or demands of whatsoever nature as are now or shall hereafter become due to me in any way, from any cause; and to use all lawful means for the collection or enforcement of the same, or to compromise the same, and give all necessary discharges therefor. To bargain, contract, agree for,

purchase, receive, take lands, tenements, hereditaments and accept the seizin and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, let and demise, bargain, sell and remise, release, convey, mortgage, hypothecate lands, tenements and hereditaments on such terms and conditions, and under such covenants as he shall see fit; and to take up all public lands under the laws of the United States, and take all necessary steps therefor the same as I might or could do if personally present. To bargain, agree for, buy, sell, mortgage, hypothecate, and in every way and manner deal in and with goods, wares and merchandise, choses in action and other property in possession or in action, and to make, do and transact all and every kind of business of what nature or kind soever.

And also for me and in my name and as my act and deed to sign, seal and execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases, satisfaction of mortgages, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

To organize corporations and to use my name as incorporator and subscribe articles of incorporation for me and in my name, and to [203] subscribe for such amounts of the capital stock thereof as he shall see fit. To accept and receipt for me any stock of any corporation so incorporated, or organized, or any other corporation, and to vote any and all stocks

held by me in any corporation as fully and completely as I might or could do if personally present.

To bargain, give, sign, transfer, sell, grant, exchange and set over, upon such terms or in such amounts as he may see fit. In short, to do each, all and every act and thing necessary for the incorporation of *of* companies, and to use and control any and all stock or any corporation of companies, and to use and control any and all stock of any corporation belonging to me in the same manner as if he were the owner thereof. To purchase and acquire in my name the corporate stock of any corporation now organized, and to use and control the same.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do is personally present, with full power of substitution or revocation hereby ratifying and confirming all that my said attorney, or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 21st day of September, 1906.

R. C. WOOD. (Seal)

Witnesses: M. L. SULLIVAN.

JOHN L. MCGINN.

United States of America,
Territory of Alaska,—ss.

Now, on this 21st day of September, 1906, before me, the undersigned notary public, personally appeared R. C. Wood, to me personally known to be the individual described in and whose signature is subscribed to the foregoing instrument, and he acknowledged [204] to me that he signed, sealed and delivered the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 21st day of September, 1906.

[Seal]

M. L. SULLIVAN,
Notary Public for Alaska.

Filed for record March 16th, 1908, at 40 minutes past 4 P. M. G. B. Erwin, Recorder. By Henry T. Ray, Deputy

United States of America,
Territory of Alaska, Fairbanks Precinct,—ss

THIS IS TO CERTIFY that the above and foregoing is a full, true and correct copy of Power of Attorney as same appears of record in Vol. I, Powers of Attorney, at page 553, et seq., thereof, under official number 22,623, records of said precinct and territory.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal at Fairbanks, Alaska, this 17th day of April, A. D. 1914.

JOHN F. DILLON,
Commissioner and Exofficio Recorder in and for
said Precinct and Territory.

(Testimony of Sidney Stewart.)

[Endorsed]: Certified Copy Power of Attorney. R. C. Wood to James W. Hill. Dated Sept. 21, 1906.

#1756, Plffs. Ex. "A." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [205]

Mr. RIDER.—Q. Mr. Stewart, have you with you the books of the partnership known as the Fairbanks Banking Company and consisting of E. T. Barnette, James W. Hill and R. C. Wood?

A. There are some of them there (indicating).

Q. I will ask you if you have the one that shows the account of the Gold Bar Lumber Company stock, how it was carried on their books, the books of the partnership. A. Yes, sir.

Q. What book is this (indicating).

A. This is the general ledger of the partnership.

Q. Of the Fairbanks Banking Company?

A. Of the Fairbanks Banking Company, a partnership.

Q. Will you turn in it to the account showing the entries in reference to the Gold Bar Lumber Company stock?

A. There is no account in here at that time of the Gold Bar Lumber Company.

Q. How was it carried?

A. It was carried then as the Johansen Investment Company, I believe.

Q. Turn to that account.

Mr. McGINN.—To which we object because it is not shown that the Johansen Investment Company

(Testimony of Sidney Stewart.)

and the Gold Bar Lumber Company is the same thing.

Mr. RIDER.—Q. In the account to which you refer, is there an item of stock of the Gold Bar Lumber Company?

A. (Examines book.) I don't quite catch that question.

Q. Can you identify in the account to which you refer as the Johansen Investment Company an entry respecting the Gold Bar Lumber Company stock?

A. Yes, sir.

Q. What is that? [206]

Mr. MCGINN.—To which we object. There is nothing to show there what that is. The book speaks for itself.

The COURT.—Q. How do you identify it?

A. The balance of this account was the amount of Gold Bar stock that was transferred to the corporation.

Mr. RIDER.—Q. In that account which you have examined, what is the value or the amount at which that stock was carried at the time it was first entered in that account, and the date of the entry.

A. That runs back to another ledger that I have not here. This balance here is of date January 2, 1907, which is brought forward from another ledger prior to this one.

Q. What is the balance shown there under that date?

A. January 2, 1907, the balance shown: Balance from Ledger No. 3, page 548, \$164,087.71.

(Testimony of Sidney Stewart.)

Q. Continuing on down with that account, are there any material increases or changes in that valuation?

A. Yes, sir. There are several entries here.

Q. Give me the entries down to February, 1908.

A. Including February?

Q. No, stop with February. Down to February, 1908. [207]

A. On August 21, 1907; interest on \$80,000—This is the memorandum as it appears on the ledger page—Interest on \$80,000, 12/28, \$1000. Under the same date, or a blank date, presumably the same date. Interest on \$80,000, 3/28, 7/28, \$1,333.33. September 18. Telegram Armstrong, from page 147, \$3.55. And on September 25, Telegram from Johansen, from page 153, \$3.30.

A. The total amount is \$166,427.89.

Mr. RIDER.—Q. When is the next change in that total?

A. The next entry *in* under date February 29, 1908.

Q. What is the entry there?

A. The memorandum says: Note and interest Scan Am—it means Scandinavian-American—brought from page 253, in amount of \$81,640.

Q. What is the next entry?

A. Under date of March 16 is: Inc—(Interrupted)

Q. What year?

A. Under same year, 1908; Inc.—Abbreviation for “increased”—valuation, from page 262, \$93,881.11.

(Testimony of Sidney Stewart.)

Q. What does that make the total of that account? [208]

A. That makes the total \$341,949.

The COURT.—Q. What was the item before that that you read?

A. Increased valuation \$93,881.11. There are other entries on the other side. The account is closed here.

Mr. RIDER.—Q. What other entries on the other side of the ledger?

A. Under date of March 16, 1908, a credit to the account; By surplus, from page 263, in amount \$341,949.

Q. That balances that account? A. Yes, sir.

Q. Mr. Stewart, I hand you another book. Can you tell me what this book is?

A. This is the cash-book of the Fairbanks Banking Company, a partnership—the cash-book and journal.

Q. The former book you used; was that the ledger? A. Ledger Number 3.

Q. Now, in the account of the Johansen Investment Company from which you read a while ago appears the entry under date of March 15, increased value \$93,881.11. Will you refer to page 262 of the journal from which that entry purports to have been taken and read what the journal entry is respecting that item.

A. Under date of March 15th there are two or three pages of journal entries.

(Testimony of Sidney Stewart.)

Q. Read the entry under that date respecting that item.

A. Under date of March 16, 1908; Johansen Investment Company account, in the debit columns \$93,881.11. To profit and loss, credit \$93,881.11. On the next line it reads: Increased valuation Gold Bar property over book value. [209]

Mr. RIDER.—There were four exhibits used yesterday and read from, and I would like to have them marked as exhibits.

The COURT.—They were admitted, subject to objection.

Subscription for stock marked Plaintiff's Exhibit "B."

Agreement between partnership and corporation marked "C,"

Minutes of meeting March 12, 1908, marked "D," and

Minutes of first directors meeting marked "E." All marked as plaintiff's exhibits.

Q. Mr. STEWART, I hand you a package of letters and telegrams which I wish you would examine and state, if you can, whether or not they came from the files of the receiver.

A. They are part of the files of the receiver.

Mr. RIDER.—I wish to offer in evidence, from the papers identified by Mr. Stewart, the following: A letter addressed to Captain E. T. Barnette, dated September 16, 1907, signed "Al," on the letter-head

(Testimony of Sidney Stewart.)

of the Gold Bar Lumber Company. That will be number 1.

Number 2: A telegram dated Seattle, September 24, 1907, addressed to the Fairbanks Banking Company from, and signed by Carl M. Johansen. With them will have to go the correspondence found in the copy-books of the bank, and I will have these copy-books identified.

Q. Can you identify these copy-books as copy-books taken from the files of the receiver?

A. I can.

Q. You have examined them, have you?

A. Yes sir.

Mr. RIDER.—Number 3: A telegram addressed to C. M. Johansen, [210] signed, Fairbanks Banking Company, dated, Fairbanks, Alaska, September 17, 1907. That is in copy-book 4, page 64.

Number 4: A communication—I can't tell whether it is a telegram or a letter—dated Fairbanks, Alaska, September 17, 1907, addressed to A. T. Armstrong, signed by the Fairbanks Banking Company. Found in copy-book 4, page 63.

Number 5: A letter on the letter-head of the Gold Bar Lumber Company, dated Gold Bar, Washington, October 12, 1907, addressed to Captain E. T. Barnette, and signed, "Al."

Number 6: A letter signed by James W. Hill, Vice-president; addressed to Carl M. Johansen, dated October 26. That is found in copy-book 20, page 47.

Number 7: Copy of a telegram found in letter-book 4, page 106, addressed Scandinavian American

(Testimony of Sidney Stewart.)

Bank; signed by Fairbanks Banking Company, dated Fairbanks, Alaska, October 26, 1907.

Number 8: A telegram addressed to Fairbanks Banking Company, signed, Scan Amn Bank, dated Seattle, November 5, 1907.

Number 9: A telegram addressed to Fairbanks Banking Company, signed The Scan Amn Bank, dated Seattle, November 6, 1907.

Number 10: A telegram addressed to Fairbanks Banking Company, signed A. T. Armstrong, dated Seattle, November 12, 1907.

Number 11: Copy of a telegram found in letter-book 4, page 125, addressed to A. T. Armstrong; signed, Fairbanks Banking Company, dated, Fairbanks, November 12, 1907. [211]

Number 12: Copy of a letter found in copy-book 20, page 201; dated November 20, 1907, addressed to A. T. Armstrong, and signed, James W. Hill, Vice-president.

Number 13: A telegram signed James W. Hill, and addressed to R. C. Wood, dated Fairbanks, December 16, 1907.

Number 14: A telegram signed, Fairbanks Banking Company; addressed to R. C. Wood, dated at Fairbanks, December 17, 1907.

Number 15: A telegram signed R. C. Wood; addressed to Fairbanks Banking Company, and dated December 17, 1907.

Number 16: A letter addressed to R. C. Wood; signed "Jim"; dated, Fairbanks, January 8, 1908.

Number 17: A copy of a telegram found in letter-

(Testimony of Sidney Stewart.)

book 4, page 205, addressed to C. M. Johansen, signed E. T. Barnette, dated Fairbanks, March 14, 1908.

Number 18: A telegram signed Fairbanks Banking Company, addressed to R. C. Wood, dated, Fairbanks, March 16, 1908.

The plaintiff now offers to read in evidence portions of the letters and telegrams which have been identified, bearing upon the stock of the Gold Bar Lumber Company, and the Gold Bar Lumber Company in general. [212]

Q. Now, Mr. Stewart, attached to this contract exhibit "B" is a list of loans and discounts which were sold by the partnership to the corporation. Have you examined those loans and discounts?

A. Yes, sir.

Mr. McGINN.—I suppose we can make the motion to strike later on?

The COURT.—Very well.

Mr. RIDER.—Q. Loans and discounts, the total of which—(Interrupted).

Mr. McGINN.—Is that Plaintiff's Exhibit "C"?

Mr. RIDER.—Yes. (Continuing)—as shown in the body of the contract under the item "C," we have outstanding loans and discounts of the value of \$353,842.54. Mr. Stewart, are any of those loans and discounts which are listed in this contract now in the possession of the receiver? A. Yes, sir.

Mr. CLARK.—We object to that as immaterial. The question would be: What was their value at that time? The fact that they are in the possession of

(Testimony of Sidney Stewart.)

the receiver is not evidence that they were valueless at that time. I presume that is the purpose.

Mr. RIDER.—You are wrong in your presumption.

The COURT.—Objection overruled.

Mr. CLARK.—We except.

Mr. RIDER.—Q. Mr. Stewart, have you made a computation of those loans and discounts referred to in exhibit “C” and sold by the partnership to the corporation, and which are now in the hands of the receiver, for the purpose of determining which ones were past due at the time this contract was entered into? A. I have such a list, yes, sir. [213]

Q. Mr. Stewart, what does your computation show is the total amount of the past due paper, that is, paper past due on March 16, 1908, held by the Fairbanks Banking Company and transferred to the Fairbanks Banking Company, a corporation, which is now in the hands of the receiver unpaid.

Mr. McGINN.—I make the same objection. (Overruled. Defendants except.)

A. \$69,908.94.

Mr. RIDER.—Q. What was the total amount of past due paper in the hands of the partnership which was transferred to the corporation by this contract, if you have it?

(Defendants make same objection. Overruled, subject to the objection. Defendants except.)

A. I don't believe I have that figured. It is on the contract.

Q. You say it is on the contract? I am asking

(Testimony of Sidney Stewart.)

now the total amount of past due paper that was transferred by the partnership to the corporation, if you have that.

Mr. HEILIG.—You mean that was past due on the 16th of March?

Mr. RIDER.—Yes, that was transferred by the partnership to the corporation that would be past due on March 16th, 1908.

A. I don't believe I have that.

Q. You have not computed that? A. No, sir.

Q. Among the notes that were transferred to the corporation by the partnership, as shown by the list attached to the contract, are two executed by the Tanana Electric Company, one numbered 1899 for \$2600.00, the other numbered 2080 for \$25,397.38. Are either of those notes in the hands of the receiver at this time? A. Yes, sir. [214]

Q. Both or one? A. Both of them.

Q. Unpaid or paid?

Mr. McGINN.—We object to that. We ask, first of all, that they produce the notes. (Notes handed to Mr. McGinn.)

Mr. RIDER.—Q. Now, will you turn to the books of the Fairbanks Banking Company, a partnership, and find its account with the Tanana Electric Company.

A. That would be in the individual ledger account, but I have not that book here.

Q. Is it where I can get it?

A. No. It is locked in the vault.

Q. I wish you would get that.

(Testimony of Sidney Stewart.)

Q. Have you the account now? A. Yes, sir.

Q. Now, does that account show a credit to the Tanana Electric Company for the note of \$2600.00?

A. Under date of July 1, 1907.

Q. What was the condition of the Tanana Electric Company account at the time it was given credit for this note?

A. The last entry before that is on the 29th of June, 1907, showing a credit to their account of \$626.15.

Q. After the \$2600.00 credit was given, what change was made in their account?

A. On that same day there was a charge of \$211.50. They had a credit balance that night of \$3,014.65.

Q. Do the books show the withdrawal of the credit of \$2600.00 that was given on July 1, as you have stated?

A. Well, on July 2d there is a check of \$2,760.53. I don't know what it was for.

Q. Charged to the Tanana Electric Company account? A. Yes, sir. [215]

Q. Do you know the items that make up that \$2700.00 check? A. No, sir.

Q. When was the note of \$25,397.38 charged in that account?

A. It was credited in that account.

Q. Or credited?

A. Credited on the 16th of November, 1907.

Q. What was the condition of the account before that was credited?

(Testimony of Sidney Stewart.)

A. There was an overdraft on the account of \$6,738.21.

Q. Do the books show what became of the credit of \$25,397.38?

A. Only that it was placed to their credit.

Q. What became of it? Did it remain there?

A. No. On the 16th and 18th of November the account was all checked out.

Q. In what items?

A. On the 16th there was a check for \$4,363.75, and \$12,939, and \$279.62, and \$76.08, and on the 18th \$1000.

Q. Do you know what went to make up the various items you have called there; whether they were all in one item, or composed of several?

Mr. McGINN.—We object as irrelevant and immaterial, having nothing to do with the issues in this case.

Mr. RIDER.—I will make it material in a moment.

(Objection overruled. Defendants except.)

A. I don't know as there is any record to show what those items were for, other than that I believe they were making advances for the Tanana Electric Company; there was a general account there, deposits and checks.

The COURT.—Just what the record shows.

A. Yes, that is all. The account shows a general checking and deposit account. There are checks and deposits all the time. [216]

Mr. RIDER.—Q. I hand you some telegrams and

(Testimony of Sidney Stewart.)

letters relating to the Tanana Electric matter. Can you identify them as from the files of the receiver?

(Hands same to witness.) A. Yes, sir.

Q. I wish to call your attention to a telegram dated Seattle, April 30, 1907, and also to a telegram dated Seattle, September 7, 1907. I offer those two telegrams in evidence. [217]

[Plaintiff's Exhibit "G"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]

"Seattle, Washington, April 30, 1907.
Fairbanks Banking Company, Fairbanks, Alaska.

Refer to your telegram of 29th April Will give a credit of \$18,500 account Tanana Electric Company.

(Signed) SCANDINAVIAN-AMERICAN
BANK.

[Plaintiff's Exhibit "H"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]

"Seattle, September 7, 1907.
Fairbanks Banking Company, Fairbanks, Alaska.

Accept note of Tanana Electric and make advances accordingly.

(Signed) J. E. CHILBERG." [218]

Mr. RIDER.—Q. Upon these two telegrams, Mr. Stewart, will you examine the account of the Tanana Electric Company, and see if credit was

(Testimony of Sidney Stewart.)

given to them based upon these two telegrams, and, if so, the date the credit was given.

A. This telegram of April 30th, on May 1st there is a credit on the account of \$18,500; and the other telegram dated September 7th, on September 9th there is a credit for \$29,000.

Q. Were those credits for \$18,000 and \$29,000, which you have just read exhausted prior to the date of these two notes for \$2600 and \$25,397, as shown upon that book?

A. The \$2600 note was given before this September credit was, and that was all checked out before September. And the credit of \$25,000 was checked out soon after it was given.

Mr. RIDER.—Q. Was it exhausted before November 16th, 1907? A. Yes.

Q. And on September 16, 1907, a credit to the Tanana Electric Company of \$25,000 was given?

A. Yes, sir.

Mr. RIDER.—Now, I offer a portion of a letter from Seattle, Washington, to the Fairbanks Banking Company, signed by J. E. Chilberg, and on the letter-head of the Scandinavian-American Bank, the portion being marked. (Hands to Mr. McGinn.)

Mr. RIDER.—(Reads): “Seattle, Washington, November 9, 1907. Fairbanks Banking Company. This situation compels an actual cessation of all loans or advances of every kind whether they have been arranged for before or not, and it will necessitate a discontinuance of advances to the Tanana

(Testimony of Sidney Stewart.)

Electric Company on their mortgage.”

Mr. McGINN.—Received here December 3d.
[219]

[Plaintiff's Exhibit “I”—Letter from Scandinavian-American Bank to Fairbanks Banking Co.]

THE SCANDINAVIAN-AMERICAN BANK.

Andrew Chilberg, Prest.

J. F. Lane, Cashier,

J. E. Chilberg, Vice-prest.

William Thaanum, Asst. Cash.

J. B. Agen, 2nd Vice-prest.

L. H. Woolfolk, Asst. Cash.

CAPITAL PAID UP \$500,000.

Surplus \$350,000.

Seattle, Wash., November 9, 1907.

Fairbanks Banking Co.,

Fairbanks, Alaska.

Gentlemen:—

I have endeavored to make my telegrams in the last two or three days as explicit as possible. What has happened to the United States seems impossible and inconceivable. Two weeks ago New York City refused to pay their balances in money and went on what is called a Clearing-house Certificate basis. They were followed the next day by Chicago, St. Louis, Kansas City, St. Paul, Minneapolis, Denver, Portland, and a day later by Spokane and Tacoma. Seattle had a great deal of cash in their own vaults and the Clearing-house thought we might weather it without going on a Clearing-house Certificate basis. We found, however, after a 5 days' trial that the other cities were bleeding our reserve to such an

extent that it was impossible to continue, as we receive nothing for drafts and checks deposited with us excepting credit and were compelled to pay cash for checks on us. You can understand how quickly almost any sum of money would have decreased. Added to this, newspaper reports of the situation of other cities caused our own people to commence to draw coin for putting it in safety deposit boxes. The result would have been, in a very few days, absolutely no money. We were therefore compelled to refuse to pay coin, and are now working upon a Clearing-house Certificate basis, exchanging balances with each other in certificates and each bank holding its own cash. This situation is simply astounding. That every city in the United States should be absolutely tied up financially at one time is more than any one could have dreamed of, and I certainly did not expect it would have been possible. The [220] result is that our New York, San Francisco Chicago and other balances are absolutely unavailable, and the only thing we have to rely upon is the cash we have here in our own vaults.

We have now arranged to issue Clearing-house Certificates based on certain very high-class security, such as warrants, bonds, etc., for circulation among our local business men to try and tide over the difficulty until New York and other cities can commence to release money for our use here. In the meantime, you will understand that it is utterly impossible to loan any money or make any advances against after-receipts of gold. Hence, our cablegram to you, and I will say here that the American Savings Bank, I

am informed, agreed with the Washington Trust Co. to send the same kind of a cablegram to Bonnifield. Having failed to do this, of course we have no control over them, as Bonnifield has money actually on deposit with them at this time, but I think even then Mr. Gleason will have cause to regret it as each one of those transfers depletes his reserve just so much. This situation compels an actual cessation of all loans or advances of any kind, whether they have been arranged for before or not, and it will necessitate the discontinuance of advances to the Tanana Electric Co. on their mortgage. I have not yet been able to get clearly in my mind what those advances are for, as I agreed to advance against the installation of the water power plant and Hutchinson's report indicated no such cost as you outline in your cablegram. I did not get to see Richmond when he was here as I was out of the city and he could not wait on account of the illness of some relative of his in San Francisco.

Of course during the last weeks it has been impossible for me to think of anything excepting banking, and do not expect to have any relief in that direction for two or three months. I am trusting upon your ideas of fairness and generosity to cover your loans and advances just as quickly as possible and [221] meet us at this time in the same spirit that we have met you when you were in trouble. This situation is not of our making and is absolutely beyond our control. Our business here was conducted, as you doubtless know, on a very conservative basis, and our en-

tire reserve amounted to about 30%. They were 30% when the lid, as we call the Clearing-house Certificates system, was put on.

I can think of nothing more to add to this letter that will make the situation more clear to you. I hope you will be able to get in position to make more money out of the business in the near future than you did during the past year.

With kindest regards to Capt. Barnette, Mr. Hill and Mr. Wood, I am,

Yours very truly,

J. E. CHILBERG.

[Endorsed]: #1756. Pltff.'s Ex. "I." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 23, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [222]

(Marked Plaintiff's Exhibit "I.")

Mr. RIDER.—Now, I offer a telegram dated November 10, 1907, at Seattle, to the Fairbanks Banking Company, from J. E. Chilberg. (Hands same to McGinn.) In further explanation of these exhibits, there will be some testimony respecting the fact that reliance was placed upon a supposed guaranty of the Scandinavian-American Bank, against which these advances were made. That testimony will come from another witness than Mr. Stewart.

(Reads):

[Plaintiff's Exhibit "J"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]

"Seattle, Washington, November 10, 1907.
Fairbanks Banking Company, Fairbanks, Alaska.
Advance nothing more Tanana Electric Company.
Signed: J. E. CHILBERG."

(Marked Plaintiff's Exhibit "J.")

Now, I offer a telegram from R. C. Wood to the Fairbanks Banking Company, dated Seattle, December 10, 1907. (Hands same to Mr. McGinn.)

Mr. MCGINN.—The same objections.

The COURT.—I will hear it.

[Plaintiff's Exhibit "K"—Telegram from R. C. Wood to Fairbanks Banking Co.]

Mr. RIDER.—(Reads): "Chilberg will not pay Tanana Electric note as per your telegram 16 November credit has been granted for note September 8 twenty-five thousand according to their statement our account balanced they refuse to pay drafts on presentation. Scan. American Bank will give credit of two hundred thousand on condition that suit dismissed, provided we accept the assignment note and mortgage Tanana Electric against which they have advanced forty three thousand."

The COURT.—It may be admitted, subject to the objection.

(Marked Plaintiff's Exhibit "K.") [223]

Mr. RIDER.—A telegram. Fairbanks, Alaska, December 11, 1907. Signed by James W. Hill and

(Testimony of Sidney Stewart.)

addressed to R. C. Wood. (Hands same to Mr. McGinn.)

[Plaintiff's Exhibit "L"—Telegram from Jas. W. Hill to R. C. Wood.]

Mr. RIDER.—(Reads): "We will not agree assume Tanana Electric loans one hundred thousand. Feel that Scandinavian-American take advantage of our position to force us. Why does Chilberg refuse to pay Tanana Electric notes after having promised to do so? Our condition hopeless. Have no alternative but close up the business. Is there any possibility of inducing Scandinavian-American if they can take care of outstanding drafts and telegraphic transfers. If they refuse, can McCord help you procure elsewhere? Overdraft on our books Scandinavian American one hundred eighty thousand. In order to protect outstanding drafts on other banks, should remit immediately."

The COURT.—It may be admitted.

(Marked Plaintiff's Exhibit "L.")

Mr. RIDER.—Q. Mr. Stewart, will you find the profit and loss account of the partnership of the Fairbanks Banking Company as it existed in the fall of 1907?

A. (Witness examines books.)

Q. In the contract between the corporation and the partnership, among the assets transferred is an item of "Warehouse of agreed value of \$3360." Do you find any item in the profit and loss account in reference to that warehouse?

(Testimony of Sidney Stewart.)

Mr. McGINN.—We object to that as irrelevant and immaterial.

Mr. RIDER.—Suppose they had charged off part of that before this sale?

The COURT.—Objection overruled. [224]

A. Under date of December 31, 1907, in the profit and loss account of the partnership of the Fairbanks Banking Company there is 20 per cent depreciation warehouse \$672.00.

Mr. RIDER.—Q. What was that warehouse carried at prior to that depreciation? A. \$3360.

Q. Now, is there any other charge subsequent to the one of December 31st, or credit, in reference to the warehouse, respecting that amount which was charged off as 20 per cent depreciation \$672?

A. Under date of March 16, 1908, in the profit and loss account, there is a credit account warehouse \$672.

Q. Turn to the account carried on that book as "bad debts." A. "Doubtful account."

Mr. RIDER.—Q. In that doubtful account do you find any reference to any of the notes which are included in the contract between the copartnership and the corporation? A. Yes, sir.

Q. What notes?

A. Those that are included in the contract were: Barrett \$16,476.18, Brazeau \$400, Schaupp \$4,420, Schaupp \$438, and Schaupp \$1,245.81.

Q. That is all that is included in the contract?

A. Yes, sir. [225]

Mr. RIDER.—Q. Now, on December 31, 1907,

(Testimony of Sidney Stewart.)

was there any credit given to the doubtful account; if so, what is it?

A. On that date there was a credit of \$20,641.34 noted as $33\frac{1}{3}$ per cent depreciation.

Q. And the total charge to doubtful account on that date was \$60,655.90?

A. That was just the items I *dead*. The total balance was \$61,924.02.

Q. And $33\frac{1}{3}$ per cent depreciation on that would amount to what? A. \$20,641.34.

Mr. McGINN.—I cannot see the materiality of all of this, and I think it is merely incumbering the record.

The COURT.—I suppose it will be connected with other testimony. Proceed.

Mr RIDER.—Q. Now, will you turn to the profit and loss account of the corporation Fairbanks Banking Company as of date December 31, 1909, and tell me if any of these notes you have called off there are charged to that account on that date. Do you remember the amounts, and what ones?

Mr. McGINN.—We object to this testimony as irrelevant and immaterial. (Objection overruled. Defendants except.)

Mr. RIDER.—Q. What ones were charges off?

A. I have not the ledger of that account with me, but I have a memorandum here: Of the Barrett note there was \$8,407.58 charged off on December 31, 1909; of the Brazeau note of \$400, there was \$162 charges off; and of the Schaupp note of \$4,420.00, there was \$3,785.22 charged off. [226]

(Testimony of Sidney Stewart.)

Mr. McGINN.—Q. Have you got that Brazeau note? A. Yes.

(Note handed to Mr. McGinn.)

Mr. RIDER.—Q. Have you there, Mr. Stewart, the Schaupp note referred to in your testimony as one of the notes that was charged off on December 31, 1907, and which was sold to the corporation on March 13th? A. Yes.

Q. What is the date? A. August 27, 1906.

Q. Have you another one? I want the one dated December 31st. (Note handed to Mr. Rider by Mr. Stewart.) Now, of the notes that were sold to the corporation, there is one note of \$1,245.81, signed by Fred Schaupp, dated December 31, 1907. Examine that doubtful account that you have before you and see if that note is included in the notes that are charged off on December 31, 1907, to doubtful account. A. Yes, sir.

Mr. HEILIG.—Referring to the doubtful account of the partnership?

Mr. RIDER.—Of the partnership.

Q. Now, find the two Barrett notes. (Notes handed to Mr. Rider.) Now, I call your attention to a note signed by William Barrett, dated June 16, 1906, in the sum of \$16,950.63, payable to Fairbanks Banking Company. Is that note now in the hands of the receiver? A. It is.

Q. Unpaid?

A. The balance of that note of \$8,400, the amount I just read, was charged to profit and loss.

Q. When that note was entered on the books of the

(Testimony of Sidney Stewart.)

partnership to their bills receivable account, how much did they charge bills receivable with for that note? A. For \$16,950.63. [227]

Mr. RIDER.—(After consulting with witness.) I will withdraw reference to that last note at this time. There is a matter in connection with it that I thought I understood, but I find I don't.

Q. There is a charge in the complaint of an allowance of \$39,642.81 as accrued interest paid to the partnership. Directing your attention to that account, have you examined the notes turned over by the partnership to the corporation and on which this interest was computed to determine whether or not the corporation has collected on those notes all of that accrued interest? A. I have.

Q. Has it been collected?

A. Not all of it. [228]

Q. Have you been able to determine from your computation what portion of that, if any, has never been collected?

A. I have not the book here with those figures on, but it is approximately \$7,500.00. [229]

Plaintiff's Exhibit "MM"—Notes Held by Receiver, April 1, 1914.]

NOTES HELD BY RECEIVER—April 1, 1914.

		Date.	Maturity.	
2941	Auten, Geo. M. and Jackson			
	Frick	6- 3-09	9- 3-09	\$500.00
3053	Auten, Geo. M. and Jackson			
	Frick	8-14-09	1 day	100.
3349	Auten Geo. M.....	5-19-10	8-19-10	540.
3192	Auten & Frick.....	8-14-09	9-13-09	500.
2532	Acheson, John and J. A. Jes-			
	son	11-16-08	7-16-09	94.
1957	Anderson, Oscar M. et al....	9-12-07	Demand	125.
2902	“ Axel.....	5-18-09	6-18-09	136.57
2020	Altman, Max.....	9-24-07	6- 1-08	495.17
2362	Brumbaugh R. and H. C. Ham-			
	ilton	6-30-08	7-30-08	5,431.33
3355	Benbrook, S. L.....	5-23-10	Demand	2,500.
1587	Berger, D. H.....	11-27-06	7-28-07	550.
2323	Boarman, F. B.....	5-22-08	Demand	1,170.50
2384	Blodgett, Jas. and R. Shep-			
	hard	7-10-08	8-10-08	1,700.
3094	Browne, T. C.....	9-17-09	3-17-10	502.
3758	Barrette, Wm.....	11- 1-10	Demand	206.
1975	“ “	8- 1-07	2- 1-08	8,809.21
3788	“ “	1-31-14	Demand	9.
2702	Baird, John F.....	2-15-09	7- 1-09	350.
3733	Clark, W. S.....	12-14-10	Demand	2,200.00
3734	Clark, W. S.....	“	“	5,000.
3735	“ “	“	“	5,000.
3736	“ “	“	“	5,000.
3737	“ “	“	“	5,000.00
3738	“ “	“	“	5,000.
3410	Courtmanche, Dave	7-12-10	8-12-10	300.
3775	“ “	9-15-11	Demand	123.12
3002	Claypool, E. E.....	7-13-09	1-13-10	1,158.14
3455	“ “	6-24-09	12-24-09	1,557.00
2382	“ “	7-09-08	8- 1-08	5,175.00
2203	Collins, John.....	2- 8-08	7- 1-08	147.50

Forward.....59,379.54

		Date.	Maturity.	
280	Casey, Wm. and A. C. Saylor.	3-31-05	5-31-05	40.00
2533	Chute, J. A. and E. J. Stier..	11-16-08	8- 1-09	9,250.
2882	Crana, A. S.....	5- 7-09	6- 7-09	40.00
2639	“ “ and E. A.....	1-25-09	5-25-09	20.
2640	“ “ “ “	1-25-09	“	400.
2470	Christian, John et al.....	10-14-08	6- 1-09	2,785.00
2805	“ “ “	3-09-09	5- 8-09	520.
2779	“ “ “	2-24-09	5-25-09	530.
2725	“ “ “	2-09-09	5- 9-09	530.
2628	“ “ “	1- 4-09	6- 1-09	1,598.75
2911	“ “ “	4-15-09	Demand	200.
3450	L. T. Erwin.....	8-11-10	12- 1-10	2,410.
2595	Erickson, Axel.....	12-29-09	5-29-09	16.
2724	“ “ and Erik John- son	2-23-09	5-12-09	2,000.
2885	Erickson & Company.....	4- 7-09	5- 7-09	408.
3076	“ “ “ Memo.	9- 2-09	Demand	30.
1861	Fairburn & Kerler.....	5- 1-07	7-15-07	300.
1883	Fairburn, Kerler & Verboone.	1-25-07	7- 1-07	1,032.00
1591	Gelling & Bechtolt.....	11-24-06	9-15-07	1,050.00
2970	Garvin, Andy	5- 3-09	6- 2-09	111.97
3284	Hoyt, Romeo N.....	3-30-10	8- 1-10	25.
3423	Hedman, John	3- 4-10	4- 4-10	99.13
3230	“ “	2-14-10	3- 1-10	95.67
B119	Heacock, E. J.....	8- 5-10	check	70.
3364	“ “	5-28-10	7- 1-10	100.
2954	Himes, Wm. H.....	4-27-09	6- 1-09	126.90
2380	Jonas, D. H.....	7- 7-08	8- 7-08	3,705.96
3016	“ “	7-10-09	11-15-09	3,000.
3017	“ “	“	1- 1-10	2,000.
2511	Jonas & Brown.....	10-27-08	6-27-09	1,851.33
Forward.....				93,725.25

		Date.	Maturity.	
1548	James, Wm.	11- 7-06	6-15-07	311.97
2726	Johnston, Harry R.....	2-24-09	5-24-09	1,200.
3070	“ Chas. and D. C. Mears	6-10-09	9- 8-09	530.
	Johnson, Erik et al., #2501...	11- 9-08	6- 9-09	310.
3153	Jackson, J. A.	11-13-09	Demand	333.71
3424	“ “	7-27-10	“	750.00
2626	Jesson, J. A.....	1-18-09	7- 1-09	500.
2762	“ “	3- 9-09	“	500.
2541	“ “	11-24-08	“	1,000.
2728	“ “ and J. H. Sutton..	2-24-09	8- 1-09	150.
2022	Kellogg, Chas. W.....	9-19-07	5- 1-08	625.
3385	Knudson, C. S.....	6-13-10	7-13-10	200.
3103	Keys, E. M.....	9-20-09	11-20-09	2,400.
2464	Kellett, P. R. and J. F. Monk-			
	man	10-24-08	5-24-09	906.30
2558	Kelley, James	10-24-08	6- 1-09	4,928.24
2718	Kovaich, Tom	2-10-09	7-24-09	685.
2887	“ “	4- 7-09	6- 6-09	113.
3001	“ “	5-14-09	7-13-09	31.50
2651	Lappi, John, Erik Orne, F. O.			
	Illberg	1-18-09	6- 1-09	957.76
3477	Lavine, Alfred et al.....	4- 8-10	6- 8-10	261.57
3315	Lind, E. C.....	11- 3-09	6- 1-10	1,322.96
3624	“ “ and Sam Lind.....	9-26-10	Demand	3,100.
3723	“ Sam	12- 8-10	“	100.
1632	Larson, Alex.	12-24-06	1-24-07	354.35
3199	Loomis, I. H. and W. S. Clark.	1-14-10	4-14-10	700.
2667	Myers, R. R.....	2- 4-09	6- 4-09	1,000.
3215	“ “	8-26-09	Demand	156.68
3411	Morgan, James T.....	2-17-10	5-17-10	106.
2990	“ W. B.....	7- 3-09	7- 4-09	80.
3162	Miller, H. I.....	7-28-09	Demand	1,546.00

Forward.....118,885.29

		Date.	Maturity.	
2129	Maddocks, Monkman & Kel-			
	lett	12- 5-07	6- 1-08	648.99
3729	Martin, Geo. et al.....	12- 8-10	5-15-11	346.30
3635	MaeCormaek, J. W.....	10- 6-10	6- 1-11	690.
3636	McDonald, Chas.	10- 6-10	Demand	350.
3769	" Rod.....	1- 3-11	"	113.56
3216	McCray, H. W. and Andy Gar-			
	vin	2- 3-10	3-15-10	236.
3632	McCray, Van Winkle and			
	Soreboe	10- 5-10	5- 1-11	1,940.00
3697	McNeer, A. H.....	11-14-10	6- 1-11	220.00
2490	" "	11- 6-08	1- 5-09	726.56
2556	" "	11-25-08	1-25-09	1,592.33
2960	McIlroy, S. D.....	6-15-09	8- 1-09	96.28
3146	MacArthur, A.	5-17-09	6-17-09	126.
3527	McCain, J. N.....	5-17-10	Demand	275.
3407	" "	2-14-10	6- 1-10	105.
2369	McMullen Bros.	7- 1-08	8- 1-08	1,000.
3415	Nelson, H. and F. P. Jorgen-			
	son	2-25-10	5-25-10	595.48
3564	Nelson & Jorgenson.....	7- 8-10	Demand	455.77
3500	" " "	4-22-10	7- 1-10	250.
3357	Nordale, A. J.....	5-23-10	7-23-10	1,295.79
2116	News Pub. Co. memo.....	2-26-08	Demand	56.93
3258	Ott, Phil and J. F. Shropshire.	10- 4-09	8- 4-10	203.50
3618	Olson, Osmund	9-26-10	Demand	2,240.
3498	Peterson, Nels	4-22-10	5-22-10	150.00
2465	" "	10-24-08	5-24-09	1,251.63
2466	" " Admr.....	"	"	1,691.62
3450	Pearson, Tom	3-23-10	6-15-10	515.
3605	" "	9- 2-10	Demand	761.30
2882	Perrault, G. A. and Henry			
	Raeder	4- 5-09	6- 4-09	2,080.
3761	Phillips, C. A.....	12-30-10	Demand	50.

Forward.....138,948.33

		Date.	Maturity.	
2552	Pamicinal, M. et al.....	12- 9-08	6- 9-09	1,526.43
3432	Patterson, Dave and L. T. Erwin	8- 1-10	11- 1-10	30.00
3678	Robinson, C. J.....	11- 3-10	Demand	1,321.71
3679	“ “	“	“	250.
2391	“ “	7-14-08	8-19-08	2,956.00
3358	Robe, L. S.....	5-23-10	9-23-10	300.
3075	“ “	8-31-09	2-28-10	500.
3000	“ “	7-13-09	4-13-10	256.50
2761	Ruppa, Adolph	3- 9-09	6-20-09	3,300.
2945	“ “	6- 3-09	8- 3-09	900.
2579	“ “	11-30-08	6- 1-09	4,837.00
2834	Smith, Geo. and A. F. Fisher..	3-19-09	5-18-09	112.92
2731	“ “ et al.....	2-11-09	5-15-09	209.36
3435	Spring, Abe	8- 2-10	10- 1-10	150.
2614	“ “ memo.....	1-11-09	—	621.13
2946	Scan, Amer. Bank dft. memo..	6- 3-09	—	575.
2877	Struthers, J. F.....	5- 3-09	7- 3-09	100.
3084	“ “	6-17-09	8-16-09	208.
3212	Siebe, H. R. and R. R. Myers.	8-24-09	Demand	2,214.66
3211	“ “	“	“	1,337.50
3210	“ “	“	“	543.33
3209	“ “	“	“	563.
2848	Sala, Joseph	4-15-09	5-15-09	500.
2449	“ “ et al.....	10- 5-08	5- 5-09	2,850.00
3257	“ “ et al.....	9-30-09	5- 1-10	890.
2857	Tharp, G. M. and E. M. Rusk..	4-20-09	6-20-09	801.00
3772	Tharp & Rusk, Memo.....	4- 3-11	Demand	33.75
3783	“ “ “	1-16-13	—	25.50
1982	Tanana Trading Co. et al.....	9-23-07	6- 1-08	2,175.82

Forward.....169,036.94

		Date.	Maturity.	
1899	Tanana Electric Co.....	7- 1-07	Demand	2,600.00
2080	" "	11-15-07	12-16-07	25,397.38
358	Timmerman, memo.	5-17-05	———	105.00
2755	Thurston, T. L.....	3- 6-09	9- 6-09	292.55
1583	Truitt, D. W.....	11-25-06	9- 1-07	1,000.00
2366	Tackstrom, O. E.....	7- 1-08	8- 1-08	346.96
3392	Verneti, John et al.....	2- 1-10	6- 1-10	960.
2959	" Dom, et al.	4-26-09	Demand	100.00
3413	Van Winkle, R. J.....	2-23-10	5-23-10	200.00
1993	Waters, Emily A.....	9- 5-07	12- 5-07	40.00
2417	Wing, L. E.....	7-13-08	Demand	150.00
2703	Williams, T. J. and J. W.			
	Brown	2-15-09	6-15-09	100.
2767	Williams, J. A.....	3- 2-09	5- 1-09	150.
1778	" "	5-24-07	Demand	3,307.83
3174	" Mrs. J. A.....	8- 4-09	10- 3-09	104.
3026	Wooldridge, T. E. and Me-			
	Namee	5-24-09	7-23-09	19.
3521	Whelan, C. R.	5-11-10	6- 1-10	16.00
2550	Wiseman, F. C. and R. L.			
	Barelay	11-30-08	5-30-09	1,543.57
2716	Walker, F. B.....	2-10-09	5-11-09	1,000.
2506	" F. B. and C. G.....	11-11-08	6-11-09	878.75
3391	White, Carl and G. Gaidos....	2- 1-10	4- 1-10	205.00
216	York, J. A.....	2- 1-05	1 day	100.
260	" "	3-15-05	6-15-05	206.00
1835	" "	10-14-04	———	100.
2963	" " memo.....	6-16-09	———	20.00
3549	Zimmerman, J. F.....	6-13-10	8-13-10	100.
3479	" " and C. W.			
	Porter	4-12-10	6-12-10	500.00
Forward.....				\$208,578.98

NOTES. In Judgment.

Case No.	Against Whom.	Amt. Note.	Judgment.
1301	Ensor & Griffiths.....	\$435.00	\$1,040.42
1720	T. Jestland	600.00	789.00
1725	Chamberlain & Curry.....	1,001.30	1,245.20
1666	Anderson, W. M.....	525.00	564.34
1708	Gilles et al.....	1,530.00	1,866.50
1719	Erickson & Johnson.....	972.38	1,608.64
1721	Bostrom & Erickson.....	2,669.37	3,713.45
1718	Arnell, J. C.....	1,134.37	1,501.12
1703	M. F. Hall.....	1,000.	1,160.00
1724	Vedin, G. A.....	2,181.13	3,226.13
1746	Stone & Brandt.....	999.75	1,289.64
1857	Howe, E. D.....	457.25	935.28
1825-6	Clark, W. Sam.....	4,939.60	6,910.26
1832	Garvin, Simonson & McCray.....	6,698.91	10,100.95
		<hr/>	<hr/>
		25,144.06	35,950.93
	Credit acct. Vedin....	3,500.00	3,500.00
		<hr/>	<hr/>
	Total.....	\$21,644.06	32,450.93

[Endorsed]: Notes Held by Receiver April 8th, 1914. #1756. Pliffs.
 Ex. "MM." Filed in the District Court, Territory of Alaska, 4th Div.
 Apr. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.
 [236]

Mr. RIDER.—Now, the testimony of Carl M. Johansen. (Reads the deposition of Carl M. Johansen.) [237]

[Title of Court and Cause.]

Depositions on Behalf of Plaintiff.

Depositions taken in the above-entitled causes on behalf of the plaintiff, pursuant to stipulation and notice in accordance therewith heretofore given, O. L. Rider, Esq., appearing as attorney for plaintiff and John L. McGinn, Esq., appearing as attorney for defendants R. C. Wood, James W. Hill and John L. McGinn, and also acting pursuant to stipulation as attorney in behalf of all the remaining defendants who are represented by McGowan & Clark as their attorneys of record.

It further appearing that John P. Garvin, a Notary Public in and for the State of Washington, at Seattle, before whom notice was given for the taking of these depositions, is absent from the city of Seattle and unable to be present on this day, it is agreed between the said attorneys that said depositions may be taken before N. W. Bolster, a Notary Public in and for the State of Washington, residing at Seattle, and the same may be used in all respects the same as though taken before the said John P. Garvin. Said depositions were therefore taken at Room 661, Colman Building, in the city of Seattle, commencing at 10:00 o'clock A. M. on the second day of March, 1914. [238]

BE IT REMEMBERED, that pursuant to the

above stipulation and agreement entered into between counsel prior to the taking of said depositions, and pursuant to the stipulation and notice hereunto annexed, at the time and place therein mentioned, before me, N. W. Bolster, a Notary Public in and for the State of Washington, duly commissioned to administer oaths, etc., etc., personally appeared W. G. Cassels and Carl M. Johanson, witnesses produced on behalf of the plaintiff in the above-entitled suit now pending in said court, who being by me first duly sworn, were then and there examined and interrogated by O. L. Rider, Esq., of counsel for said plaintiff and by John L. McGinn, Esq., of counsel for said defendants, and testified as follows:

[Title of Court and Cause.]

Depositions on Behalf of Plaintiff.

Depositions taken in the above-entitled causes on behalf of the plaintiff, pursuant to stipulation and notice in accordance therewith heretofore given, O. L. Rider, Esq., appearing as attorney for plaintiff and John L. McGinn, Esq., appearing as attorney for defendants R. C. Wood, James W. Hill and John L. McGinn, and also acting pursuant to stipulation as attorney in behalf of all the remaining defendants who are represented by McGowan & Clark as their attorneys of record.

It further appearing that John P. Garvin, a Notary Public in and for the State of Washington, at Seattle, before whom notice was given for the taking of these depositions, is absent from the city of Seattle and unable to be present on this day, it is agreed between the said attorneys that said depo-

sitions may be taken before N. W. Bolster, a notary public in and for the State of Washington, residing at [1] Seattle, and the same may be used in all respects the same as though taken before the said John P. Garvin. Said depositions were therefore taken at Room 661, Colman Building, in the city of Seattle, commencing at 10:00 o'clock A. M. on the second day of March, 1914.

BE IT REMEMBERED, that pursuant to the above stipulation and agreement entered into between counsel prior to the taking of said depositions, and pursuant to the stipulation and notice hereunto annexed, at the time and place therein mentioned, before me, N. W. Bolster, a notary public in and for the State of Washington, duly commissioned to administer oaths, etc., etc., personally appeared W. G. Cassels and Carl M. Johanson, witnesses produced on behalf of the plaintiff in the above-entitled suit now pending in said court, who being by me first duly sworn were then and there examined and interrogated by O. L. Rider, Esq., of counsel for said plaintiff, and by John L. McGinn, Esq., of counsel for said defendants, and testified as follows:

[Deposition of W. G. Cassels, for Plaintiff.]

W. G. CASSELS, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. RIDER.)—You may state your name.

A. W. G. Cassels.

Q. Where do you live?

A. I live in Seattle, Washington.

Q. Did you ever live in Fairbanks, Alaska?

(Deposition of W. G. Cassels.)

A. I have. [2]

Q. Were you living at Fairbanks, Alaska, at the time a certain partnership known as the Fairbanks Banking Company, consisting of E. T. Barnette, James W. Hill and R. C. Wood, were doing a banking business in Fairbanks? A. I was.

Q. Were you acquainted with the members of that partnership? A. I was.

Q. And were you acquainted with the bank which they conducted under the name of the Fairbanks Banking Company?

A. Acquainted as one doing business with it, yes.

Q. It appears from the records of that bank that you, with certain others, were appointed a board of trustees to examine into the affairs of the said Fairbanks Banking Company some time in December, 1907; do you recall that appointment? A. I do.

Q. And do you remember who the other members of that board were?

A. I don't understand that it was a board of trustees, though. It was a board appointed from the depositors of the Fairbanks Banking Company, a committee.

Mr. McGINN.—They were designated as a board.

Mr. RIDER.—They styled themselves as a committee in their report.

Mr. McGINN.—Maybe, but they are spoken of in the minutes as a board.

The WITNESS.—I knew it as a committee.

Q. (Mr. RIDER.) Do you remember who the other members of that committee were, Doctor?

(Deposition of W. G. Cassels.)

A. Yes, sir; Col. C. E. Claypool, Daniel H. Jonas, Dan Ryan, [3] George Preston and myself.

Q. By whom were you appointed as such committee, Doctor?

A. By a general meeting called of the depositors in the courthouse and we were the five names selected, among several names that were nominated at that meeting.

Q. What was the purpose of your appointment as such committee?

A. To confer with the officers of the bank in regard to the failure, or the closing of the doors, and to report back at a subsequent meeting the conditions as we saw them in the bank.

Q. The bank which you refer to is the Fairbanks Banking Company, a partnership.

A. The Fairbanks Banking Company, I think that was the name—it changed the name so often that I don't remember.

Q. Did you or your committee take charge of the assets of that bank, the Fairbanks Banking Company?

A. Well, that question is asked in such a way that I could not very well answer it.

Q. Just state what your committee did.

A. The committee met and organized and engaged a stenographer, a Mr. Miller of Chena; he had been a former bank examiner I understood, and we went into convention and met with the bank officers, looking over their assets and liabilities, and later reported to a subsequent meeting of the depositors.

(Deposition of W. G. Cassels.)

Q. For what purpose were you looking into the assets and liabilities of the bank?

A. In regard to whether we felt that they were able to pay the amount of the deposits in the bank, as they had [4] previously closed their doors about forty-eight hours before.

Q. Did your committee make an inspection of the notes then held by the bank? A. They did.

Q. There appears among the files of the bank what purports to be a typewritten report of your committee, but which report as found in the files is not signed by your committee; do you remember whether or not there was a report prepared and signed?

A. There was a report prepared and signed, as I remember it.

Q. In your report there is noted among the resources of the bank an item of loans and discounts \$427,251.26; did you have the notes before you which made up that item of loans and discounts in your investigation?

A. I believe we did. We had the notes and what security was there was presented at the time.

Q. Do you remember whether or not among those notes was one signed by the Tanana Electric Company, in the sum of \$27,997.38.

A. I do not remember the amount, but I remember there was one against the Tanana Electric Company.

Q. And do you remember that it was approximately in that amount?

(Deposition of W. G. Cassels.)

A. I could not say the amount; it was several years ago.

Q. Do you remember whether or not there was more than one note of the Tanana Electric Company? A. I could not say that.

Mr. RIDER.—You do not question, Mr. McGinn, but what that was the amount of the note, do you? [5]

Mr. MCGINN.—Really, I do not know.

Mr. RIDER.—I just want to identify that note.

Mr. MCGINN.—I think there was only one, that is my recollection of it, but I do not know just what the amount of it was—I do not pretend to say now.

Q. (Mr. RIDER.) Were you acquainted with the affairs of the Tanana Electric Company at that time. December, 1907?

A. Now, that word “acquainted”—sufficiently acquainted with it that when solicited, I did not want any stock in it.

Q. Were you sufficiently acquainted with it to know the value of its paper at that time?

A. No; I think I had an opinion though in regard to its paper at that time.

Q. Had you been in business in Fairbanks, Alaska, prior to the time you went into this committee? A. Yes, sir.

Q. For how long? A. Three years.

Q. And what was the nature of your business?

A. Physician and surgeon.

Q. And were you acquainted generally with the financial standing of the people in that community?

(Deposition of W. G. Cassels.)

A. As a physician would be, yes?

Q. Did you regard the note of the Tanana Electric Company which was examined by you and reported on, as of value?

Mr. McGINN.—To which we object on the ground that it is irrelevant, immaterial and incompetent, and the issue involved is not as to the value of the note of the Tanana Electric Company on December 16, 1907, and [6] furthermore that the witness has not qualified as an expert to pass upon the value of the note of the Tanana Electric Company, because it has not been shown that he knew what the assets or liabilities of that institution was in any way, and because it is evident that his information would come to him in the way of rumors and by hearsay, and the further objection that the opinion of this witness is immaterial.

A. Not of value as regards the paper of the electric company, but a letter was presented at that time by the bank which convinced me that the advances to the electric company had been authorized by the Scandinavian-American Bank of Seattle, and it was really their credit that was in question.

Q. By whom was this letter presented, Doctor?

A. I believe that the letter was presented by Mr. Dusenbury, or Mr. Hill, but I believe by Mr. Hill—those were the only two that handled the papers.

Q. Was any investigation made by your committee to determine the value of the Tanana Electric Company note?

A. There was some discussion by the committee.

(Deposition of W. G. Cassels.)

It was, as I remember, referred to Mr. Claypool as the only attorney sitting at the board, and he believed that the letter or papers presented by the bank was sufficient to hold the Scandinavian-American Bank as security for the debt.

Q. Did he make that representation to the committee?

A. He did, so far as I was concerned; that was my belief at the time.

Q. I mean, did he make that statement to you?

A. He did, as I remember it. [7]

Q. Is he the same Claypool who subsequently became a director of the Fairbanks Banking Company, a corporation? A. I don't know.

Mr. McGINN.—I will admit that he is the same.

Q. (Mr. RIDER.) What was it that induced you, as a member of that committee, to report the Tanana Electric Company's note in the amount that you did report it, as a resource of the bank?

A. Because I believed that it was secured by the Scandinavian-American Bank of Seattle.

Q. Do you remember whether or not a note of William Barrett was presented to you or to your committee at the time of that investigation?

A. I believe it was.

Q. Do you remember the amount of that note?

A. I do not.

Q. Do you remember whether or not it was in a large sum?

A. I could not say; I think I remember something about it, but I do not remember the amount.

(Deposition of W. G. Cassels.)

Q. What is your recollection of the amount?

A. I would not attempt to put the amount on it.

Q. I find listed among the notes that were submitted to your committee a note of William Barrett in the sum of \$37,008.33—

Mr. McGINN.—That must be the wrong amount—I think it should be \$8,000.

The WITNESS.—I think that is certainly a mistake—that can't be the right amount.

Mr. RIDER.—You do not recall the amount, though? A. I do not recall the amount. [8]

Q. Well, there was a note of William Barrett examined by the committee. A. Yes.

Q. Were you acquainted with the financial standing of William Barrett at that time?

A. In a general way, yes.

Q. Did you regard his note as of value?

A. Yes, because it was secured by an insurance that was made in favor of the Fairbanks Banking Company, because of a fire that had burned, and besides that it was secured by the property, I think, on Third Avenue.

Q. Without such security, would you have regarded his note as worth par?

A. I do not consider any man's note good without security.

Q. That does not answer my question as to this particular note.

A. I can't answer it any different. I would not take any man's note personally that was not secured.

Q. What was the reason that induced you to report

(Deposition of W. G. Cassels.)

the Barrett note, and to include it among the resources of the bank?

A. Because we thought the security was ample for the amount that we gave him credit for, and if we gave him credit for the whole of the note we believed the security at that time was ample to cover that.

Q. Was the attention of the committee called to the fact that a great many of the notes held by the Fairbanks Banking Company partnership were past due at the time you were making your examination?

A. Yes, but the committee understands that all notes are [9] usually past due in Fairbanks at that time of the year.

Q. Was your attention called to the fact that some of the notes were past due as much as two years?

A. No, I do not remember that that was.

Q. Was your attention called to the fact that—

Mr. McGINN.—We object to this as leading—let the witness state what was done.

Q. (Mr. RIDER.) Was your attention called to the fact that as much as \$53,000 of the paper that was presented to you was past due, ranging from a few months to three years?

Mr. McGINN.—I object to that as irrelevant, immaterial and incompetent; what the committee did and what they reported is the issue here and not what was shown them or not shown them at that time.

A. I do not think it was presented in that light. The committee knew when the notes were drawn. The notes were read to the committee and the security that was on it.

(Deposition of W. G. Cassels.)

Q. (Mr. RIDER.) Referring to the note of William Barrett, was your attention called to the fact that that note was past due for nearly eighteen months?

A. I don't think it was. I don't think the note was taken into consideration,—it was the security that was taken into consideration, as I remember it.

Q. Do you remember a note of Gelling & Bechtolt?

A. I do not remember the note.

Q. Were you acquainted with Gelling and Bechtolt at that time? A. No, I don't remember them.

Q. Did you know William Casey? [10]

A. Yes, sir.

Q. Do you remember a note of his in the sum of forty dollars?

A. I don't remember it, but I believe if it was there it was good.

Q. Was your attention called to the fact that the William Casey note had been due since May 31, 1905, at the time you gave your report on it?

A. It may have been reported to us that way—the note was read, but I do not remember any individual note of forty dollars—this is seven years ago.

Q. Would you have regarded his note, which had been due since 1905, as a valuable asset of the bank?

A. I certainly would.

Q. Although past due for this length of time?

A. Yes. If this refers to Casey who kept the Northern saloon, there is no question in my mind but that that was a valuable asset. There must be some mistake about that, because Casey is absolutely

(Deposition of W. G. Cassels.)

good—there must have been some dispute about it, or he would have paid it.

Q. Do you remember a note of Ensore and Griffiths?

A. I do not remember the note or the people.

Q. Do you remember a note of Fairborn and others?

A. I don't remember the note; I remember Mr. Dave Fairborn.

Q. Do you remember the amount of that note?

A. No, I do not.

Q. Do you remember the *a* note signed by Fairborn, Kerler and others in the sum of \$2,000?

A. I don't remember the note. I think I remember their name being presented to the committee, but I don't remember [11] the amount.

Q. I don't care to go down through the entire list—the two notes I principally care to inquire about are the Tanana Electric Company note and the note of Barrett.

A. Well, I could not remember those other notes.

Q. Did you know, or was it made known to your committee that any of the notes examined by you had been charged off by the partnership known as the Fairbanks Banking Company, to profit and loss prior to the time that they were submitted to you for examination?

A. No. It was not known to the committee.

Q. Was the Mr. Jonas who was on your committee the same D. H. Jonas who afterwards became a director of the Fairbanks Banking Company, a cor-

(Deposition of W. G. Cassels.)

poration? A. I believe it was the same.

Mr. McGINN.—We admit it was the same.

Q. (Mr. RIDER.) And the Dan Ryan that was on your committee was the same Dan Ryan that subsequently became a director?

A. I believe so, and also George Preston, he became a director too.

Q. You also were elected a director, were you not, Doctor?

A. I don't know. I was told I was, but I do not know of my own personal knowledge.

Q. Did you ever qualify as a director?

A. No, I did not.

Q. Did you ever take stock in the bank as reorganized?

Mr. McGINN.—We object to that as wholly immaterial.

Q. (Mr. RIDER.) Do you remember?

A. I should say, yes, with some explanation to it. I believe L. T. Irwin signed for one thousand dollars worth of [12] stock, signing notes for the same in my name. This was, I understand, to qualify as a director for the new corporation, my name having been suggested as a director without my knowledge or consent. Later I sold the same stock, through Mr. James Hill to, I believe it was Mrs. Claypool. A few months later I became in possession of one share of stock which I afterwards sold to Mr. L. T. Irwin. The only thing I ever saw was the note.

Q. Did you ever qualify as a director?

A. I did not.

(Deposition of W. G. Cassels.)

Q. Did you decline to do so? A. Yes.

Q. At the time that the affairs of the bank were in the hands of your committee, was there any other security held by your committee in addition to the securities owned by the bank?

A. The private mining property and property in Fairbanks of Mr. E. T. Barnette and his wife, and also some properties on Dome Creek that he had powers of attorney for, was held by the committee until the bank was able to redeem all the scrip and pay its indebtedness.

Q. When, if you know, were those private securities surrendered to Mr. Barnette?

A. They were surrendered to Mr. Barnette at the retirement of the script.

Q. And during the time that you were on the committee?

A. Yes. Between those times there was a reorganization of the bank, with which I had nothing to do.

Q. Were the private securities returned to Mr. Barnette [13] prior to the reorganization of the bank?

A. They were returned at the retirement of the scrip.

Q. Was that after you retired from the committee?

A. Our committee had still to hold, because this was made to the committee.

Q. Do you remember when your committee was discharged?

(Deposition of W. G. Cassels.)

A. They were discharged at the retirement of the scrip.

Q. Do you remember when that was, about the date?

A. It was in the spring of 1908, but I do not know what month; my recollection was that it was in August. I know it was after the gold-dust came in. I know the question came up when the gold-dust came in, the question was whether it should go to the bank or should go to the committee, and I know I had a little fuss about that—you see I was the only one of the committee that was not a director in the new organization, so I held that the gold should go to the committee until they were able to call in all the scrip, and at about that time that that transaction was made, they called in their scrip and the committee was discharged.

Q. At any time during the service of your committee, was the question considered by your committee of the value of the assets of the bank, for the purpose of a sale or purchase of the same, considered by the committee? A. No.

Cross-examination.

Q. (Mr. McGINN.) Doctor, Charles E. Claypool is now a superior judge of the State of Washington?

A. That is what he told me the other day. [14]

Q. How long had you known him prior to December, 1907? A. 1904—I think it was in 1904.

Q. You also knew Dan Jonas prior to December, 1907? A. Yes, sir.

Q. How long had you known him?

(Deposition of W. G. Cassels.)

A. Since 1904, three years.

Q. You also knew Dan Ryan?

A. About the same time.

Q. And George Preston?

A. About the same time.

Q. You knew the standing of those men in the community, in Fairbanks? A. Yes, sir.

Q. I will ask you to state what it was. A. Good.

Q. I will ask you to state whether or not they were considered sound, careful, conservative business men.

A. I think so—they were so considered by the depositors, I think, or they would not have been chosen.

Q. I will ask you to state whether or not the committee in going over the notes and loans and discounts of the bank, did so carefully and scrutinized each individual paper.

A. Yes, sir; carefully, so far as they were concerned—carefully for the objects that they had in view.

Q. And they were acting entirely for the benefit of the depositors of the institution?

A. Yes, with that in view.

Q. And acted honestly and to the best of their ability, in your opinion? [15]

A. I believe they did. The object, of course, in view, was, of course, only to give the depositors information in regard to the condition of the bank.

Q. And after they had carefully gone through all the affairs of the bank they made this report to the depositors didn't they (showing document to wit-

(Deposition of W. G. Cassels.)

ness). A. Yes, this looks like the report.

Mr. McGINN.—I suppose we can agree on this.

Mr. RIDER.—I don't think there is any question about it, if you are sure that it is the same.

Mr. McGINN.—I am sure it was—it was in my original papers.

The WITNESS.—I know the latter part of it is right, because we asked to have Mickey appointed as receiver, and I see that that is in there. I could not say that the exact figures are the same as the report, but if our signatures are on it, it is all right.

Mr. McGINN.—The only copies I have seen are unsigned; I never saw a signed copy, and that is the reason I cannot bring you anything you can identify. I will offer it in evidence, and ask that it be marked for identification.

Mr. RIDER.—I am willing that a copy of the report can be put in as soon as we can identify it as an exact copy.

(Copy marked "Ident. 1" and returned to counsel for defendants.)

Mr. McGINN.—I will ask that this document, on the front of which is printed "Report of the committee of depositors on the financial condition of the Fairbanks Banking Company, Fairbanks, Alaska, as of December 12, 1907," be marked as Defendants' Exhibit No. 2 for the purpose of identification.

(Document above identified is by the notary marked as requested and returned to counsel for defendants.) [16]

Q. (Mr. McGINN.) Doctor, I now show you a

(Deposition of W. G. Cassels.)

report which has been marked Defendant's Exhibit No. 2 for identification, and I will ask you to state whether or not this committee which has been spoken about made that report at the time that it is dated, that is upon the 21st day of December, 1907?

A. Now, I am willing to say that that is the same report, so far as I know, and there is one little clause which I would like to call attention to—here is a little clause to the effect that Captain E. T. Barnette, as president of the bank, declared to the meeting that he was ready to turn over his personal property, if necessary, in satisfaction of the bank's obligation. There is no question that I felt, as one of that committee, that I was influenced in giving as favorable an account of the Fairbanks Banking Company as I could conscientiously do so, because of the fact that not only was the bank secured by the assets which we thought possibly were ample, but again Captain E. T. Barnette put in the hands of this committee as much or even more than was in the assets of the bank, which had an influence in making me give as favorable report as possible.

Q. But, at the same time, you believe that that report was true or you would not sign it? A. Yes.

Q. And you believe that the valuation which you put on the loans and discounts and other securities of the bank were true or you *were* not have made them? A. Yes, sir; to the best of our knowledge.

Q. Did you believe Doctor that the depositors and people [17] that subsequently became stockholders of the Fairbanks Banking Company a cor-

(Deposition of W. G. Cassels.)

poration had a right to rely upon the statements contained in those two reports.

A. I believe they had.

Q. Doctor, you are not sure at this time as to what all the securities the bank held in regard to that Barnett note?

A. No. I remember that there was an insurance and the property, I remember that, but the other I do not remember.

Q. You regarded the note of the Tanana Electric Company good, on account of the guarantee which you supposed was in existence at that time.

A. I don't know *just disposition* was made of it, but at the time whatever disposition we did make of it was our best belief in the matter. I could not remember the details of it now.

Q. At that time there was no disposition on the part of Mr. Hill and Mr. Dusenbury to conceal anything? A. No.

Q. There was the utmost openness about the matter? A. Yes.

Redirect Examination.

Q. (Mr. RIDER.) Was the attention of your committee called at any time to the fact that the guarantee, or supposed liability of the Scandinavian-American Bank on the Tanana Electric Company note, had been repudiated by the bank?

A. No, just the reverse. [18]

Q. Did your committee make any investigation respecting the stock of the Gold Bar Lumber Company which was held by the partnership bank?

(Deposition of W. G. Cassels.)

A. Yes; there was a question came up as to the value of the Gold Bar Lumber Company.

Q. What investigation did you make respecting that, and what representations were made to you, if any?

A. There was some discussion by the committee. There was a difference of opinion in regard to the Gold Bar Lumber Company. Personally, I was willing to accept it at what they had paid for it, believing that the amount of the accrued profits had been expended on the property and *and* that the property was not worth any more than they had paid for it. Three others of the committee took an opposite view, and after considerable discussion it was put to a vote and the committee was in favor of increasing the value of the Gold Bar Lumber Company a certain amount. I don't remember just what.

Mr. McGINN.—Doctor, do you remember whether or not there was a report of the officers of the Gold Bar Lumber Company presented to the committee?

A. Yes, sir.

Q. Showing the assets and liabilities? A. Yes.

Q. And it was largely upon that that the committee acted?

A. No. I was willing to take that report, but the committee was willing to give them still more than that report, because when the report was presented I was willing as one to take it as it was represented by the officers of the bank. The others wanted to give them the benefit [19] increased price of timber out here, and increased stumpage and so on,

(Deposition of W. G. Cassels.)

that was figured at twenty-five cents increase on the stumpage, and Mr. Hill said that the accrued profits of the Gold Bar Lumber Company from the time they received that property, had been put on the property and he felt it was worth more than the report.

Q. Well, there was just a difference of opinion between you and some other members of the committee? A. Yes.

Q. And the majority was in favor of turning it in for the amount of the debt? A. Yes.

Q. And you feel, Doctor, that they acted honestly and to the best of their judgment in the matter.

A. I have no reason for feeling that they did not.

Q. It was a matter of judgment.

A. It was a matter of opinion. [20]

State of Washington,

County of King,—ss.

I, N. W. Bolster, a notary public within and for said state, do hereby certify that on the second day of March, A. D. 1914, before me, as a notary public, the testimony of the foregoing witness W. G. Cassels and Carl M. Johanson, was taken pursuant to the notice and stipulation hereto attached; the said witnesses before testifying were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that I took such depositions accurately in shorthand and thereafter transcribed the same, and that the foregoing is a full, true and correct transcript of said shorthand notes; and I further certify that during the taking of the deposition

of W. G. Cassels two documents used in connection with the examination of said witness were by me marked for identification as exhibits "1" and "2," and returned to counsel for defendants; that during the examination of the witness Carl M. Johanson certain photographs identified by and used in the examination of said witness were by me marked as exhibits "1," "2," "3," and "4" to the deposition of Carl M. Johanson and the same are returned herewith as part of said deposition.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 3d day of March, A. D. 1914.

[Seal]

N. W. BOLSTER,

Notary Public in and for the State of Washington,
Resident at Seattle.

Notary fees paid by Plaintiff \$36.75,

N. W. BOLSTER,

Notary. [21]

Fairbanks, Alaska, Dec. 16, 1907.

To the Depositors and Creditors of the Fairbanks,
Banking Co.

Gentlemen:—

Your committee, appointed to investigate and examine into the affairs and conditions existing in connection with the closing and suspension of the Fairbanks Banking Co. beg to report as follows:

Your committee obtained the services of Mr. R. H. Miller and Mr. C. E. Taylor as expert accountants to accompany them in their investigations, and waited upon the officers of the Fairbanks Banking Co. at eight o'clock P. M. on Saturday Dec. 14, 1907.

(Deposition of W. G. Cassels.)

Dr. W. G. Cassels was elected chairman of said committee and Mr. C. E. Taylor was requested to act as secretary.

Mr. J. W. Hill, on behalf of the Banking Company presented to your committee a statement showing the financial condition of the bank as follows:—

Fairbanks, Dec. 11, 1907.

RESOURCES.

Stocks	375,824.00	
Real Estate	27,339.65	
Loans & Discounts	427,251.26	
Overdrafts	49,366.38	
Due from Banks	4,142.67	
Cash & Dust on Hand	14,769.61	898,693.57

LIABILITIES.

Due to Depositors	453,668.56	
Due to Banks	90,209.30	543,877.86
Net Surplus..		354,815.71

[22]

Mr. Hill, requested your committee to examine all books, vouchers, documents, and other evidence in the bank in support of said statement.

Your committee then proceeded to separately scrutinize all of the notes, mortgages, certificates and other resources set out in said statement.

The loans made by said bank were examined carefully by your committee, and were divided into three classes; First of which should consist of those considered by your committee as Gilt-edge Class 2

were those loans considered perfectly good, but which might be slow of collection.

Class 3, included those that might be considered doubtful.

The resources mentioned, were also segregated as follows: those secured by mortgage, and those unsecured, mention of which will further appear in this report.

Your committee adjourned at 1:25 A. M. Sunday, and convened again at 11 A. M. of the same day and again went into the consideration of the said resources of the bank.

Each item was taken up separately and was scrutinized by your committee and each of them, and was passed upon by a majority vote thereof, touching the face value of same. As a result of said investigation of said resources and securities, we beg to present for your consideration a statement showing the present financial condition of the Fairbanks Banking Co., based upon good, sound and what your committee deems reliable resources: to wit: [23]

RESOURCES.

Stocks	353,949.00	
Real Estate	26,491.90	
Loans & Discounts		
No. 1 Secured	255,390.98	
2 “	40,134.03	
1 Unsecured	56,603.75	
2 “	44,373.20	396,501.96

Overdrafts.

No. 1	30,838.65	
2	5,763.80	36,602.45
Due from Banks	4,142.67	
Cash & Dust on Hand	14,769.61	832,457.59

LIABILITIES.

Due to Depositors	453,668.56	
Due to Banks	90,209.30	543,877.73
		<hr/>
Net Surplus	288,579.73	

The difference of \$66,235.44 between the statement of the bank as presented and the statement of your committee herewith consists of resources, which while of a doubtful character, may be of value, yet on behalf of all concerned were not so considered by your committee and were eliminated from the statement.

The above statement is based on actual face value of the resources and does not take into account nor include any interest that has accrued thereon.

Your committee would further report that the general obligations due from the business men of the City of Fairbanks and the mining men of the creeks are considered by this committee to be of a high class, and such as would be readily accepted by any conservative banking institution. [24]

Your committee proceeded to examine the books of accounts of said bank, and found the same apparently well and creditable kept, and a further examination into the individual accounts of the officers and staff of the said bank, disclosed the same to be normal, with no large or exceptional withdrawals

from the said bank, by either or any of them.

This investigation further disclosed the fact that at the close of navigation, a financial statement of the condition of the bank showed a cash resource of practically \$200,000.00, which said amount is considered by your committee, under ordinary circumstances to have been ample and sufficient to meet any and all usual demands of the said bank. Since that time, there has been a regular and steady withdrawal of funds by depositors, the same being most severe since the first day of November, 1907.

Your committee cannot too highly commend the manner and demeanor of the officers and staff of the said bank, who unreservedly threw open the bank, its books, papers and all its affairs to your committee, and showed a disposition to assist in the investigation in every way.

Capt. Barnette assured this committee, that, in addition to the above and foregoing statement of resources and securities, he would devote his entire property to the satisfaction of the creditors of the bank if found necessary.

Your committee found a few mortgages which had not yet been recorded, but which have since been recorded with the proper officer.

IN CONCLUSION, your committee would further set forth; that inasmuch as it is rumored that certain of the creditors of the bank may institute legal proceedings against the said bank at any time, with a view of establishing themselves as preferred creditors; and as such action would seriously militate against the best interests of all concerned, we

would recommend that the affairs of the bank [25] be placed in the hands of a reliable and responsible party to act as receiver of the said bank; That inasmuch as the affairs of the said bank have been carried on in a satisfactory manner, and that the suspension of the said bank is in nowise due to local mismanagement, we would suggest that the best interests of all parties herein would be subserved by the maintaining of the present staff of the said bank, and therefore recommend the appointment of either of the following gentlemen, to wit, Mr. B. R. Dusenbury or Mr. Duncan Michie be suggested to the Court as such receiver of said bank.

Respectfully submitted,

_____,
_____,
_____,
_____,
_____.

Committee.

[Indorsed]: District Court 4th Judicial District, Alaska.

F. G. Noyes, vs. J. A. Jesson, #1756 and other cases being Nos. 1761, 1894 and 1905.

Exhibit No. 1, to the deposition of W. G. Cassels taken before N. W. Bolster, Notary at Seattle, March 2, 1914. N. W. Bolster, Notary. [26]

REPORT
OF COMMITTEE OF DEPOSITORS
on the
FINANCIAL CONDITION
of the
FAIRBANKS BANKING COMPANY.
Fairbanks, Alaska.

As December 12, 1907. [27]

Fairbanks, Alaska, December 21, 1907.

M.....

As a depositor and creditor of the Fairbanks Banking Company, you are entitled to be informed as to the present status of its affairs.

On December 12, 1907, owing to the unusual and continuous withdrawal of funds by depositors, brought about by the general feeling of unrest in financial circles all over the United States as well as in our community, the bank temporarily closed its doors. The officers of the bank at once called a meeting of its depositors and creditors at the courthouse in Fairbanks on Saturday, December 14, 1907, at which meeting a large number of depositors were present, all other persons being excluded, except the officers of the bank.

At this meeting the bank officers stated that the bank was in a perfectly solvent condition, and that the depositors would be paid every dollar due them and at the same time invited the creditors and depositors to cause an examination into the affairs of the institution.

This proposition was accepted and the depositors, by open ballot, then and there elected the following named gentlemen, to wit, Dr. W. G. Cassles, Mr. C. E. Claypool, Mr. Dan Ryan, Mr. George Preston, and Mr. D. H. Jonas, to act as a committee to examine into the affairs of the company, and gave the committee power to obtain expert assistance to further carry out said examination.

The committee obtained the services of two expert accountants and proceeded to examine the affairs of the bank, working thereon the greater part of Saturday night and all of Sunday, and reported back to a meeting of creditors on Monday, December 16, at 10 o'clock A. M.

The committee rendered their report, showing that they had carefully and thoroughly examined the resources and assets of the bank, and the liabilities thereof; that they had separately scrutinized each note, mortgage, and other document, covering the loans made by the bank; that they had set aside as of a doubtful character resources of the bank to the amount of over \$67,000.00, and that after such deduction the committee had found a net surplus of \$288,679.73, as shown by the [28] *the* statement prepared by said committee.

The committee also reported that the management of the bank was excellent, and commended the officers and employees for the manner in which they had thrown open the bank, vault, books, papers, and everything pertaining to its affairs for examination by the committee.

The report of the committee was favorably received

and the matter of appointing a receiver was discussed by the depositors and it was on motion decided, that if a receiver was necessary the name of James W. Hill should be presented to the Court as the unanimous choice of the meeting.

Captain E. T. Barnette, as president of the bank, declared to the meeting that he stood ready to turn over, if necessary, all of his personal property in satisfaction of the bank's obligations.

During the progress of the meeting, it was reported that the Washington-Alaska Bank and the First National Bank had decided to go on a clearing-house basis, and issue their own certificates instead of currency, whereupon it was suggested that the Fairbanks Banking Company could do likewise. On motion, duly made and seconded, the committee was requested to confer with the other banks with a view of entering into such an arrangement with them, and to report back to a meeting at 8 o'clock that evening.

Accordingly, at 8 o'clock, at the same place, the meeting reconvened, and the committee reported that they were unable to conclude arrangements with the other banks. The committee suggested that the Fairbanks Banking Company being in an excellent condition to do so, act independently, with the consent of its creditors, and proceed to issue certificates of its own, backed by the securities of the bank, and the further securities offered by Captain Barnette; and that the committee should work in harmony with and co-operate with the officers of the bank to the end that

the bank might resume business on a certificate basis.
[29]

The committee met at the office of the bank on Wednesday, December 18, 1907, all the members thereof being present, together with the officers of the bank. After fully discussing the matter, it was then and there decided that the bank should turn over to the committee as trustees for the depositors and creditors all the resources, notes, and other securities already passed upon by the committee and that Captain Barnette should in like manner turn over to the committee, as such trustees, sufficient property to the satisfaction of the committee as to value, as would make the total resources and securities in the hands of the committee double the total of the liabilities of the bank to its creditors.

It was further decided at said meeting, that Mr. B. R. Dusenbury of Fairbanks, Alaska, be appointed register of the committee, and that all of the resources and securities be held by him, and in his personal possession as such register, subject to the action of the committee, and pending the final adjustment of the affairs of the bank.

The certificate or scrip of the bank will be in denominations similar to present currency and will be a promise to pay the bearer on or before August 1, 1908, certified on the back thereof by the trustees and register that they hold securities for said payment in double the amount called for on the certificate.

Under the circumstances the Fairbanks Banking Company, and Captain Barnette, having complied with the requests of the trustees in regard to said

securities, the bank will re-open its doors for the resumption of business on Monday, December 23, 1907, using certificates as above outlined in lieu of currency.

The work of the committee has been on behalf of and for the protection of the depositors. It has involved much time and labor, which each member has been glad to render for the good of all without remuneration. In all probability there is no record of a bank having closed its doors where the depositors acted in so sane and rational a [30] manner. Certainly no committee ever received more loyal support. We believe the final result will justify every action.

We earnestly request your hearty co-operation in the above plan, assuring you that we believe that these trying times of financial depression will soon be over.

Respectfully submitted,
W. G. CASSELS, Chairman.
DAN RYAN,
D. H. JONAS,
GEORGE PRESTON,
C. E. CLAYPOOL,

Committee.

[Indorsed]: District Court, 4th Judicial District, Alaska. *F. G. Noyes vs. J. A. Jesson*, #1756, and other cases being Nos. 1761, 1894 and 1905. Exhibit No. 2 to the deposition of W. G. Cassels, taken before N. W. Bolster, Notary at Seattle, March 2, 1914. N. W. Bolster, Notary.

[Endorsed]: #1756, #1761, #1894, #1905. In the District Court for the Territory of Alaska, Fourth Judicial Division. F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al., Defendants. F. G. Noyes, Receiver, Plaintiff, vs. John Zug et al., Defendants. F. G. Noyes, Receiver, Plaintiff, vs. R. C. Wood, Defendant. F. G. Noyes, Receiver, Plaintiff, vs. F. M. Hawkins et al., Defendants. Depositions of W. G. Cassels and Carl M. Johanson, witnesses in behalf of Plaintiff.

Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [31]

*In the District Court for the District of Alaska.
Division No. 4, at Fairbanks, Alaska.*

United States of America,
District of Alaska,
Division No. 4,—ss.

Certificate.

I, J. E. Clark, Clerk of the District Court for the District of Alaska, Division No. 4, hereby certify that the foregoing and hereto attached thirty-one pages of typewritten matter, numbered from 1 to 31, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the original Deposition of W. G. CASSELS together with Exhibits Nos. 1 and 2, attached thereto, in the following cases, entitled, F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al., Defendants (No. 1756), F. G. Noyes, Receiver, Plaintiff, vs. John Zug et al., Defendants (No. 1761), F. G. Noyes, Receiver, Plaintiff, vs. R. C. Wood, Defend-

ant (No. 1894), F. G. Noyes, Receiver, Plaintiff, vs. F. M. Hawkins et al., Defendants (No. 1905), as the same appears on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 4th day of May, 1915.

[Seal]

J. E. CLARK,
Clerk.

By Sidney Stewart, Deputy. [32]

[Endorsed]: Nos. 1756, 1761, 1894, 1905. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al. (1756), John Zug et al. (1761), R. C. Wood (1894), F. M. Hawkins et al. (1905), Defendants. Certified Copy of Deposition of W. G. Cassels, together with Exhibits Nos. 1 and 2, Attached Thereto.

No. 2528. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 3, 1915. F. D. Monckton, Clerk.

[Deposition of Carl M. Johanson, for Plaintiff.]

CARL M. JOHANSON, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. RIDER.) State your name.

A. Carl M. Johanson.

Q. Where do you live?

A. Seattle, Washington.

Q. What is your business?

A. I am in the investment, insurance, real estate and so forth.

(Deposition of Carl M. Johanson.)

Q. How long have you lived in Seattle and vicinity?

A. I have been out here on the coast since 1897; I have been permanently living in Seattle since 1907.

Q. 1907? A. Yes.

Q. Have you been interested in the lumber business any? A. Yes.

Q. To what extent and since when?

A. I have been in the lumber business since 1898.

Q. Are you acquainted with the property of the Gold Bar Lumber Company?

A. Well, I am acquainted with it.

Q. You have an interest in that? [239]

A. Yes.

Q. How much stock do you own?

A. One-fifth of the stock.

Q. When did you become interested in that company, Mr. Johanson? A. In 1906.

Q. With whom?

A. With E. T. Barnette, J. W. Hill and R. C. Wood.

Q. At that time you acquired your one-fifth interest at the same time they acquired their four-fifths interest. A. Yes.

Q. Were you acquainted with the property of this company in March, 1908? A. Yes.

Q. You at that time had a one-fifth interest in it?

A. Yes, sir.

Q. Were you acquainted with the value of the property at that time? A. Yes.

Q. And what it consisted of? A. Pretty well.

(Deposition of Carl M. Johanson.)

Q. What was the value of the capital stock of the Gold Bar Lumber Company in March, 1908?

Mr. McGINN.—We object to that on the ground that the witness has not shown himself to be competent to testify, and that it is calling for the expression of his opinion as to the worth of the property, and that no proper foundation has been laid.

A. Well, the value of the capital stock in 1908, March, 1908, is somewhat a matter of opinion.

Q. (Mr. RIDER.) Well, have you an opinion?

A. Well, if I was to have sold Gold Bar at that time in March I was figuring on the basis of about the original purchase price plus interest from the time we bought to the time of selling. However, I would not state that to be the actual [240] value, because I was a minority stockholder and what I would have sold out for would not have probably fixed the value.

Q. It is not a question of what you would have sold out for—do you know what was the market value?

A. It had no market value. Stock of that sort has no market value, because it is not negotiated and sold or transferred.

Q. Had it any market value at all at that time?

A. It had a certain *market*, because you could sell it at a sacrifice, undoubtedly, but it had no market value.

Q. You were acquainted with the property owned by the Gold Bar Lumber Company at that time?

A. I was.

Q. And you know what that property was?

(Deposition of Carl M. Johanson.)

A. Yes.

Q. Are you acquainted with the value of that property owned by the Gold Bar Lumber Company at the time? I am asking you now for the value of the property?

Mr. McGINN.—We make the same objection, that the witness has not been shown to be competent to testify as to the value of Gold Bar, and that he is merely expressing his personal opinion.

Q. (Mr. RIDER.) What was the value of the property of the Gold Bar Lumber Company in March, 1908; that is, the fair, reasonable value to be placed upon that property?

A. I would add the original purchase price plus interest from the time it was bought up to that time, That is my opinion.

Q. Well, you can give me, in round numbers, what that would amount to?

A. Well, interest at six per cent on three hundred thousand dollars would be, for two years, would be thirty-six thousand dollars.

Q. And your estimate is that the purchase price plus the interest to that time would be its value.

A. That is as close as I can put the value on it, if it would [241] have any value. Of course, it might have a greater speculative value, and on a conservative investment it might have a less value.

Q. What is the purchase price you have in mind?

A. We paid three hundred thousand dollars for the property in May, 1906.

Q. Do you know whether or not the plant of the

(Deposition of Carl M. Johanson.)

Gold Bar Lumber Company was in operation in March, 1908?

A. I do not remember; no, the books will show that.

Q. Mr. Johanson, you remember being out on the property of the Gold Bar Lumber Company with myself and a photographer here in Seattle named Pearson one day last October.

A. I do not remember the man's name, but I was with you there with a photographer.

Q. At the time when some photographs were taken? A. Yes, sir.

Q. I wish you would examine these photographs which are marked plates numbered 1, 2, 3, 4, 5 and 6, and tell me if you can identify them as photographs of the Gold Bar Lumber Company grounds.

Mr. McGINN.—If you will state that they were taken there I am satisfied.

Mr. RIDER.—They were taken there.

Mr. McGINN.—Then I will admit that they were taken there.

(Photographs shown witness are marked for identification Plaintiff's Exhibits "1," "2," "3," and "4" to the deposition of Carl M. Johanson.)

Cross-examination.

Q. (Mr. McGINN.) I will ask you to refer to the exhibit marked Plaintiff's No. "1," and state what portion of the Gold Bar property that represents?

A. Well, this represents some of the logged-off land. [242]

Q. About how many acres would you say was in-

(Deposition of Carl M. Johanson.)

cluded in that photograph marked No. "1"?

A. Well, of course it is not all logged, you understand.

Q. How much would you say the entire acreage of land is included in that?

A. This here, for instance, is the Fort Blakeley property here and this is Stimson's timber over here. Ours was in here and up in here (showing).

Q. So that that photograph does not entirely represent the property of the Gold Bar Lumber Company? A. Not the green timber.

Q. About how many acres of the Gold Bar Lumber Association is represented there?

A. There is, probably, of the logged-off land which you see here; there is probably twelve hundred acres.

Q. What is the total acreage of Gold Bar?

A. Well, there is about—there was a thousand acres of logged-off land sold last year, including this.

Q. I do not mean the logged-off land. I mean the total acreage. A. That it had in the beginning?

Q. Yes.

A. Of course we have acquired and sold, you know.

Q. I mean in the beginning?

A. Well, in the beginning I should say there was about three thousand acres with the timber and logged-off land; I should judge about that, but then that has been changed,—we kept buying and selling.

Q. And you figure that there is about twelve hundred acres represented there.

A. Of this logged-off—that belongs to Gold Bar—well, there was a thousand of it was sold last year, of

(Deposition of Carl M. Johanson.)
the logged-off lands.

Q. To whom?

A. To Oscar E. Jenson & Company. [243]

Q. For how much? A. A dollar an acre.

Q. Do you know the number of feet of timber that came from there?

A. That would have to be also a guess—I would have to get it from the books.

Q. Can you tell?

A. I can't swear to it accurately.

Q. You could not tell without reference to the books? A. No, sir.

Q. The books will tell it?

A. Why, certainly. My approximation would be, I would say, one hundred million.

Q. You mean entirely?

A. No, I mean that is the stumpage.

Q. I don't want any approximation, I don't want your guess.

A. I could not tell you without the book.

Q. Your approximation about the twelve hundred acres here is a good deal of guesswork.

A. Well, we sold Oscar Jenson one thousand acres of that land that is represented there, and we had about two hundred more logged off, at that time.

Q. I show you identified exhibit No. 2; what does that represent (showing)?

A. Well, this is the logged-off land. I can't exactly locate that—that must be the valley land, by the way it looks.

Mr. RIDER.—I can tell where that picture was

(Deposition of Carl M. Johanson.)

taken if you wish.

Mr. McGINN.—I would rather have the witness testify.

A. Well, what I should say as to this picture—I should say this represented a view of the valley land that we took, but exactly where it is I can't say.

Q. Do you know about how many acres are included in that picture? A. No. [244]

Q. Do you know the number of feet of timber that was cut off of that particular property?

A. I would not know unless I knew the acreage.

Q. That is what you call logged-off land?

A. Yes—in the valley—I should call that valley land.

Q. I show you exhibit No. 3 for identification, and I will ask you what that represents (showing).

A. This represents the logged-off land of the Gold Bar Lumber Company from another viewpoint; only a portion of what was in exhibit No. 1—it is really taken from a different angle.

Q. But it is intended to cover the same ground?

A. Yes.

Q. And what you said about exhibit No. 1 applies to this, so far as this covers what is in there?

A. Yes.

Q. The logged-off land is all included in exhibit No. 1, is it not?

A. Well, as near as you can see it here—that is upland—the valley land is not in it—that shows the upland, what we call the bench land that rises above the level of the valley.

(Deposition of Carl M. Johanson.)

Q. I will ask you to look at exhibit No. 4 and I will ask you to state what that represents (showing).

A. That is taken from the country road just outside of the town—the border line of the town of Gold Bar, and it is an eastern view of the mountains up the Skykomish valley, which is the valley land of the Skykomish—the valley of the Skykomish looking eastward.

Q. Do you now how many acres that represents?

A. This is a view clear up here to Mount Index; that is Mount Index here on the right, right back of that stump or snag, and that is the Three Sisters; back there to these mountains it is probably fifteen miles.

Q. Is that included in Gold Bar?

A. No. [245]

Q. I mean the number of acres of Gold Bar that is included?

A. Very little; this was all disposed of in the early days; Mr. Lewis sold it to settlers, and Gold Bar parted with the title to that before we went in there.

Q. Then this photograph marked No. 4 practically shows nothing of the Gold Bar land in it?

A. That has very little of Gold Bar in it; there was a little over there to the extreme left, but you can't see it.

Q. Then practically everything that throws any light upon the Gold Bar property is contained in Exhibit No. 1.

A. On the logged-off land, yes, only that one picture of the valley.

(Deposition of Carl M. Johanson.)

Q. Were you present when those photographs were taken? A. I was.

Q. When were they taken?

A. I cannot give you the date; they were taken last fall some time.

Q. About the month of November?

A. October or November; somewhere along there.

Q. Who was present at the time?

A. Myself, Mr. Rider and the photographer.

Q. Did you go over there at the instance of the receiver of the bank?

A. No; I was making trips to Gold Bar regularly for the past year.

Q. You own a one-fifth interest in Gold Bar?

A. Yes, sir.

Q. And naturally you were looking out after your interests more or less in the property?

A. Yes, sir.

Q. And taking trips over there?

A. Yes, while I was engaged.

Q. What would you regard as the present value of Gold Bar?

A. In the neighborhood of \$250,000.

Q. I will ask you to state whether or not you received a telegram from Mr. Jonas in the month of December, 1907, relative to the value of Gold Bar property? [246] A. I did.

Q. When did you go to Alaska? A. In 1897.

Q. What part of Alaska?

A. Well, I went to Dawson.

Q. And then from Dawson where did you go?

(Deposition of Carl M. Johanson.)

A. To Eagle City.

Q. How long did you reside in Eagle City?

A. About six years.

Q. When did you first become acquainted with Dan Jonas?

A. I do not remember; probably in 1898 or somewhere along there, or 1899; he came from Dawson down to Eagle.

Q. And you had known him prior to December, 1907, in the neighborhood of ten years.

A. Pretty close to ten years.

Q. I will ask you as to the relationship that existed between you and Mr. Jonas during that time.

A. Why, there was no particular relationship, except rather friendly.

Q. You had confidence in one another?

A. I presume so.

Q. You had confidence in him? A. Yes.

Q. And you knew he had confidence in you?

A. I presume he did.

Q. And he sent a personal telegram to you in regard to the value of this property?

A. I think he did, yes.

Q. Now, you have stated that you regard the value of the Gold Bar property at that time, that is in March, 1908, as what you paid for it and interest on your purchase price from the time you had purchased it up to March. A. Yes, sir. [247]

Q. That is what you personally considered the property worth? A. Yes, sir.

Q. And that is what you would be willing to have

(Deposition of Carl M. Johanson.)

accepted for it? A. Yes.

Q. The timber is more or less speculative, isn't it?

A. It is speculative in its nature.

Q. And that is your own private opinion in regard to it? A. Yes.

Q. Is that based upon what they were holding timber elsewhere for in the immediate vicinity?

A. It is a conservative estimate on what timber was held at by others.

Q. And you regard that as a conservative estimate? A. I do, yes, sir.

Q. You put a plant on there in 1907, didn't you?

A. There was a plant on there.

Q. You increased the plant?

A. The capacity was increased a little.

Q. You say you now regard the property as worth two hundred and fifty thousand dollars. A. Yes.

Q. There has been considerable timber cut off since that time. A. Yes.

Q. There is a great difference of opinion amongst men as to the value of timber land, is there not, Mr. Johanson? A. There is.

Q. More or less of a fluctuating value too, is it not?

A. It follows necessarily with the lumber market—the rise and fall in the lumber market fixes the value of timber considerably.

Q. The market has not been good?

A. It has been very poor since 1907?

Q. It was good in 1907, wasn't it? [248]

A. 1906 and 1907 were the best years they ever had in the lumber business on the Coast.